



भारत का राजपत्र The Gazette of India

प्राधिकरण से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 29] नई दिल्ली, शनिवार, सितम्बर 17, 1988/भाद्र 26, 1910
No. 29] NEW DELHI, SATURDAY, SEPTEMBER 17, 1988/BHADRA 26, 1910

इस भाग में निम्न पृष्ठ संख्या की जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as
a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों की छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 30 अगस्त, 1988

प्रा.प्र. 89—1985 की निर्वाचन अर्जी में 1
में कर्नाटक उच्च न्यायालय के तारीख 25 मार्च, 1988 के
निर्णय 43, लोक प्रतिनिधित्व अधिनियम, 1951 (1951
का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग
प्रकाशित करता है।

[नं. 82/कर्ना.-सो.म./1/85/88]

आदेश से

सी. एल. रोज, सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 30th August, 1988

O.N. 89.—In pursuance of section 106 of the Representa-
tion of the People Act, 1951 (43 of 1951) the Election
Commission hereby publishes the judgment of the High
Court of Karnataka dated 25th March, 1988 in Election
Petition No. 1 of 1985.

[No. 82/KT-HP/1/85/88]

By Order,
C. L. ROSE, Secy.

2248 GI 88-1

IN THE HIGH COURT OF KARNATAKA ;
AT BANGALORE

Dated : 25th day of March 1988

BEFORE

THE HON'BLE MR. JUSTICE S.G. DODDAKALEGOWDA
ELECTION PETITION NUMBER 1 OF 1985

BETWEEN :

Choudhari Rajagondappa Bhimanna,
aged 45 years,
residing at Shahapet Road,
Bijapur.

...Petitioner

(By Smt. M. N. Pramila, Advocate for Petitioner

AND :

1. Guraddi Shivashankarappa,
Mellappa, aged 57 years,
residing at B. Salawadagi,
Taluka Muddebihal,
District : Bijapur.

2. Kulkarni Ramarao Kalyanrao,
aged 55 years,
Subhash Colony,
Near Golmumbaj,
Bijapur.

3. Koralli Gangadhar Shiddaramappa,
aged 48 years,
Indi Road,
Bijapur.

4. Nagur Dr. Sardar Basavaraj
Karabasappa, 68 years,
residing near Barid Bawadi,
Bijapur.
5. Peera Mahiboo Abdul Rahiman
Advocate, aged 35 years,
residing at Jumma Masjid Road,
Bijapur.
6. Bamanalli Laxmibai Annayya
Dixith, aged 50 years,
residing near Ramamandir,
Bijapur.
7. Biradar Rayappagoud Baragoud,
aged 35 years,
residing at Padekanur,
Taluk : Muddebihal,
Bijapur District.
8. Hosamani Chandrashekar
Kasappa, aged about 50 years
residing at Managoli Road,
Bijapur.
9. The Returning Officer for
28-Bijapur Parliamentary
Constituency-cum-Deputy
Commissioner, Bijapur,
Dr. J. N. Chaubey, Major,
Bijapur.
(By Sri S. B. Nannur Math,
Advocate for R-1,
Sri Pattanasetty,
Advocate for R-2,
3, 5 to 7.
Respondents 4 and 8
placed ex-parte.
Respondent-9 deleted
vide Court Order,
dated 13-6-1985.)

... Respondents

This Election Petition is filed by petitioner under Section 81 of the Representation of People Act, 1951 for recount of the entire ballot papers including the rejected ballot papers of 28-Bijapur Parliamentary Constituency and to declare the election of first respondent from No. 28-Bijapur Parliamentary Constituency as void under Section 100(1)(b) of the Representation of People Act, 1951; declare election of first respondent as materially affected the result of the said election under Section 100(1) (d) of the R. P. Act; and to declare the petitioner as having been duly elected from 28-Bijapur Parliamentary Constituency, after the recount, etc.

This Election Petition is coming on for hearing, this day the Court made the following :—

ORDER

In an election held on 24th June 1984 to the House of Representatives from Bijapur Constituency, petitioner, respondents 1 to 8 were the candidates; petitioner sponsored by Indian National Congress-I, first respondent as Janatha candidate. The contest was mainly between petitioner and first respondent. Out of 4,25,210 votes first respondent secured 2,06,737 and petitioner secured 2,04,318 and the remaining 9 candidates all put together secured 14,155 votes. As first respondent had secured 2,419 votes more than the petitioner, he was declared as elected.

The petitioner has questioned the validity of election of first respondent and has sought for relief under Section 100(1)(b) and 100(1)(d) (ii), (iii) and (iv) of the Representation of People Act, 1951 (hereinafter referred to as the 'Act') based on the following averments :—

Entire process of election of first respondent was engineered and supervised by Sri J. S. Deshmukh, the then Minister for Power in the State of Karnataka and he acted as his agent.

Returning Officer, Assistant Returning Officers, Counting Supervisors including assistants, acted as stooges in the hands of the Hon'ble Minister; counting was done in utter violation of the provisions contained in the Act, rules and instructions. Counting Officials were deliberately choosen to help and aid the prospects of first respondent; all along officials were partial in discharge of their duties.

Returning Officer, who was in the inception impleaded as 9th respondent, appointed two other officers to assist / assistant Returning Officers in scrutiny of doubtful ballot papers, contrary to the rules, particulars of persons who were so appointed as Assistants to the Assistant Returning Officer are furnished in para IV(4) of the petition. The power of scrutiny of ballot papers of Assistant Returning Officers could not have been delegated to others.

Counting though scheduled to be commenced at 8-00 a.m. on 28-12-1984, actually commenced at 9-00 a.m. Petitioner had appointed 16 Counting Agents for each segment. On 22-12-1984 petitioner was informed that there would be 17 counting tables in so far as Bijapur segment, instead of 15; accordingly, petitioner appointed 18 counting agents. As all the candidates did not arrange for appointment of their counting agents, the Returning Officer permitted many unauthorised persons to enter the counting hall and to participate in counting at various tables, contrary to rule 53. The Returning Officer did not assign the table numbers to the counting agents as required under rule 53(3); instead, counting agents were allowed to sit at counting tables of their choice and were allowed to move freely at their whims and fancy; despite the complaint by Hussain Basha s/o Khaia, counting agent, at table No. 10 of Bijapur segment, no action was taken as against counting agents of Janatha Party under Rule 53(4) of the Rules for their misbehaviour; counting agent of Janatha Party in that table was taking ballot papers marked in favour of petitioner and putting them in the compartment of first respondent. At the commencement of the fourth round, unauthorised persons numbering ten to twelve rushed to counting hall, took the ballot papers marked for petitioner and dumped them in the compartment of first respondent. Srivaths Basha and A. R. Kandal @David Counting Agents, were sent out of the Counting hall as they protested against such irregularities without any justification and made to sit with the Superintendent of Police for half an hour. In their absence, Counting Staff manipulated ballot papers. This was clearly contrary to Rule 64 of the Rules.

Postal ballot papers were counted at about 10.30 a.m. making it impossible for the Election Agent of petitioner to watch counting at counting table of various segments; petitioner was not allowed to take down the number of ballot papers selected by the Returning Officer and, in fact, no reasons were assigned for rejection of postal ballot papers.

Counting Agents of petitioner were not allowed to inspect whether paper seal on ballot boxes were intact or not. Returning Officer, without being satisfied as to whether seals were intact or was there any tampering commenced counting. Counting in all EIGHT segments was done in utter violation of Rule 56 of the Rules. No test-check of valid ballot papers was done by the Returning Officer.

Arrangements made for counting were not in conformity with the prescribed norms; only three trays were provided for distribution of ballot papers; one tray was divided into two compartments by a thin card board; one compartment earmarked for petitioner and the other for first respondent; one tray was utilised for placing of doubtful ballot papers; and the other for distribution of ballot papers of the rest of the candidates. Petitioner's agents were not allowed to make notes; in fact, in Indi segment when one of the counting agent insisted to make a note, papers were snatched by the Assistant Returning Officer and counting agents were prevented from taking notes, though the Hand-Book issued by the Election Commission provided for taking notes; when real contest was between the petitioner and first respondent, separate trays should have been provided for them.

Counting Supervisors were making entries in Parts-I and II of Form No. 16 contrary to Rules. Counting Supervisors used to treat the ballot papers with thumb impressions or smudged impressions caused while folding by ignorant voters as doubtful; large number of ballot papers in which there were distinct marks of stamp in the column of petitioner near the symbol instead of treating them as valid were improperly rejected as small portion lay either on the line or marginal column of other candidates; similar ballot papers of first respondent were treated as valid despite objections. When those doubtful ballot papers were taken to Assistant Returning Officer's table for scrutiny, Assistants attached to Assistant Returning Officers rejected them as invalid.

Assistant Returning Officers mechanically put their signatures on the ballot papers without assigning reasons; Assistants were allowed to act arbitrarily and in a partisan manner so as to help first respondent. This was the procedure adopted in almost all the segments.

Out of 11,998 rejected ballot papers, 8,000 votes were marked in favour of petitioner and were deliberately and arbitrarily rejected as invalid. Petitioner was not in a position to give the serial numbers of such ballot papers as his Counting Agents were not permitted to note down the serial numbers of the ballot papers.

Objections raised by Counting Agents were not acceded to; complaint filed by the Election Agent before Returning Officer proved in vain.

With reference to entries made in Final Result Sheet—Form No. 20—produced along with petition as Annexure-D (which later on has been marked as Ex. P-527), it was alleged that entries in Form No. 20 do not correctly reflect entries made in Form No. 16. Petitioner was shown as having secured 21,017 in column No. 5 from Muddebihal Segment; whereas records maintained by Returning Officer showed that he has secured 20,981; thus, there was a discrepancy of 36 votes in Hoovina Hipparagi, petitioner was shown as having secured 27,457; whereas the records maintained by the Returning Officer showed that he has secured 27,357 with discrepancy of 100. In Basavana Bagewadi segment, petitioner was shown as having secured 24,047; whereas the other records showed that he had secured 24,048 with a discrepancy of 1 vote. In Indi Segment, petitioner was shown as having secured 23,926; whereas the other records showed that he has secured 24,034 with a discrepancy of 108 votes. First respondent was shown as having secured 27,634; whereas other records showed that he had secured 27,673 with discrepancy of 39. In Hoovina Hipparagi Segment, first respondent was shown as having secured 24,619; whereas other records indicate that he had secured 24,599 with discrepancy of 20. In Tikota Segment, first respondent was shown as having secured 19,828; whereas other records indicate that he has secured 19,728 with discrepancy of 100. In Indi segment, first respondent was shown as having secured 28,484 whereas other records indicate that he had secured 28,544 with discrepancy of 60 votes. Likewise, the discrepancy in respect of other candidates were set out.

Thus, it was averred that neither votes secured by petitioner nor first respondent or for that matter, votes secured by remaining candidates, put together don't tally with one another either round-wise or total-wise entire counting was a mess and in a post-haste manner to suit the first respondent.

Total votes polled as mentioned in Annexure-D also do not tally. In Muddebihal Segment, total votes polled were mentioned as 51,315 whereas records maintained by the Returning Officer showed total votes polled as 51,321 with discrepancy of 6 votes. In Hoovina Hipparagi Segment, total votes polled were mentioned as 55,528; whereas other records showed them as 55,407 with discrepancy of 121 votes. In Basavana Bagewadi Segment, total votes polled were mentioned as 56,355; whereas other records indicated them as 56,335 with discrepancy of 20. In Tikota Segment total votes polled were mentioned as 49,631; whereas as per other record they were 49,531 with discrepancy of 100 votes. In Bijapur Segment, total votes polled were mentioned as 67,158; whereas other records indicated them as 67,167 with discrepancy of 9. In Ballolli Segment, total votes polled were

mentioned as 57,572; whereas other records indicated them as 57,576 with discrepancy of 4. In Indi Segment, total votes polled were mentioned as 49,853; whereas other records showed them as 49,973 with discrepancy of 120 votes. In Sindhi Segment, total votes polled were mentioned as 56,560, whereas other records showed them as 56,620 with discrepancy of 60. It was also alleged that there were round-wise discrepancies as indicated in Annexure-B1 and B2. Counting Supervisors have made variations in Part-I and II of Form No. 16 so as to make up the total of first respondent.

It is alleged in para 38 of the petition that total ballot papers polled at Polling Station No. 41 of Bijapur Segment were 417. On opening, only 358 ballot papers were found. Similarly at Polling Stations Nos. 6 and 7 of Bijapur Segment, few ballot papers were missing and when brought to the notice of the concerned officers, no action was taken to ascertain as to how it had occurred.

Returning Officer was not announcing results on completion of each round of counting. However, on completion of sixth round of counting, he announced that petitioner was leading by a margin of 5,500 votes; revealed it to the press and this was broadcasted in All India Radio at their special news bulletin at 4.32 a.m. and 5.32 p.m. on 28-12-1984; thereafter Janatha Party agents became panicky; immediately thereon, first respondent and Minister Deshmukh appeared on the scene, closetted with Returning Officer for half an hour; thereafter the complex of process of counting was thoroughly changed. At about 6-30 p.m. Returning Officer announced that first respondent was leading by 2,622 votes. In fact, at this point of time, Counting Agents of petitioner protested against haphazard way of re-arrangements and the manner of counting took place after the sixth round. The post-haste manipulation started from and after the sixth round to make and build up the records to show that first respondent was leading from seventh round onwards which was highly impossible. With reference to entries of previous round as entered in Form No. 20, it was alleged that it was highly impossible and improbable to first respondent to secure a lead in these constituencies, but for manipulation of counting officials. On account of manipulation by counting agents, valid ballot papers of petitioner were put in the tray of first respondent; some of the ballot papers of petitioner were rejected as invalid; whereas invalid ballot papers of first respondent were counted as valid.

In para 39, it is alleged that ballot papers of various polling station mentioned therein revealed marking by a particular person want only and systematically, obviously with collusion of polling staff; polling staffs have not performed statutory duties. The request made to set apart those ballot papers were not acceded to.

The Returning Officer did not provide sufficient time to prepare an application for re-count; Returning Officer after signing the prescribed form as an eye wash granted hardly half an hour to file an application for re-count, if any. Within that short time, the petitioner, to the best of his ability, collecting necessary information/data from his Counting Agents, filed an application setting out grounds for re-count. At that juncture, the Returning Officer had received a telephone call from Minister Deshmukh who, in turn, informed that application would be rejected. These factors would demonstrate collusion between Deshmukh and Returning Officer and his staff.

First respondent procured the assistance of Government officials whose names were set out in para 44 of the petition and thereby committed corrupt practice under Section 123 (7) of the Act. Those officials were partial and acted as agents of first respondent. Two officers who assisted Deputy Commissioner were acting as per the instructions of Deshmukh in furtherance of the prospects of first respondent's election. The denial of certified copies of certain documents or delay caused in grant of certified copies of certain documents and appointment of certain officials working in Educational Institutions under the control of Deshmukh, as counting staff, lend support to the plea that they were actively assisting and helping the first respondent.

Returning Officer, who was in the inception arrayed as 9th respondent filed written statement denying all the allegations apart from urging that he was neither necessary nor a proper party to the proceedings. He refuted the allegations that (i) he and his subordinate in charge of election duty, acted as a stooges of Sri Deshmukh; (ii) counting staffs were appointed at the behest of Sri Deshmukh contrary to conduct of Election Rules and the counting staffs acted contrary to the provisions of the Act, Rules and guidelines contained in Hand-Book in furtherance of the prospect of election of first respondent and to the detriment of petitioner. Persons mentioned in Para-IV of the petition merely assisted Assistant Returning Officers in deciding doubtful ballot papers; they assisted him in getting doubtful ballot papers from each counting table, putting seals on the back of rejected ballot paper and in tabulation. Election Commission had appointed Assistant Returning Officers as per Notification, dated 11-12-1984 and Assistant Returning Officers were competent to exercise powers of Returning Officer as per Section 22 of the Act under the control of Returning Officer. According to him, arrangements had been made in the counting halls as per instructions contained in Annexure-25 of the Hand-Book for Returning Officers and lay out at counting halls was made as per the pattern provided therein; Instructions of Election Commission have been scrupulously followed. Pursuant to the Telex message received from Chief Electoral Officer two more counting tables were provided for counting of ballot papers of Bijapur segment in addition to 15 counting tables normally provided at each segment. Candidates were informed in advance to appoint as many counting agents as there were counting tables in addition to one more counting agent to watch the scrutiny at Assistant Returning Officer's table. Through Notification, dated 14-12-1984 and 22-12-1984 he had notified the names of counting supervisors and counting assistants. Hence, question of manipulation in appointment of counting staff, so as to favour the first respondent did not arise. At the time of issue of badges to counting agents table numbers were assigned. No person other than the persons appointed as counting staff was allowed inside counting halls. Allegations that unauthorised persons were allowed to enter and meddle with the ballot papers and they were moving according to the whims and fancy were denied. No complaint was received either regarding haphazard counting or partisan attitude of the counting staff or misbehaviour of the counting agents of the first respondent. Sealed boxes were opened in the presence of counting agents and they were allowed to inspect whether seals put on ballot box were intact or not. No counting agent was prevented by making a notes nor were they told not to make any notes. He asserted conduct of test check as provided in Hand Book.

Six trays were kept at each table, one tray for petitioner, one for first respondent, four for remaining seven candidates divided into compartments and one for doubtful ballot papers. Assistant Returning Officers decided the validity of doubtful ballot papers in the presence of counting agents of all candidates. Neither counting supervisors nor persons who assisted those Assistant Returning Officers took decision regarding their validity. Assistant Returning Officers assigned reasons for rejection as required under Rule 56 of the Rules; allegations that the Assistant Returning Officers were mechanically putting their signatures or the seal meant for rejection of ballot papers without application of mind were denied.

Postal ballot papers were opened in the presence of all the candidates/election agents/counting agents and reasons were assigned for rejection of 107 postal ballot papers as invalid. None of the election agents or their counting agents was prevented from making note of the serial number of ballot papers rejected as invalid or reasons assigned for rejection.

The allegations that there were innumerable mistakes between entries in Form No. 20 and Parts-I and II of Form No. 16 were refuted. He asserted that as per Form No. 20, 11,998 ballot papers were rejected as invalid and not 11,994; Result sheet was prepared segment-wise by Assistant Returning Officer and the Final Result Sheet was prepared by him taking total figure of each segment. As per entries in

Form No. 20, Final Result Sheet, total votes rejected at Constituency No. 217 Muddebihal were 1331; total votes rejected at Constituency No. 208 Hoovina Hipparagi were 1555. In entire constituency total number of rejected ballot papers were 11,998 and there was no discrepancy. As per Form No. 20 votes secured by the petitioner at Muddebihal, Hoovina Hipparagi, Basavana Bagewadi and Indi were 21017, 27457, 24047 and 23926 respectively. First respondent secured at Muddebihal, Hoovina Hipparagi, Tikota, Sindhi 27,624, 24,619, 19,828 and 28,484 votes respectively. Total votes polled in each segment i.e. constituency Nos. 217 to 224—Muddebihal, Hoovina Hipparagi, Basavana Bagewadi, Tikota, Bijapur, Balloli Indi and Sindhi were 51,313, 55,528, 56,355, 49,631, 67,158, 50,572, 59,853 and 56,516 respectively and postal ballot papers 236; total 4,37,208 and there were no discrepancies segment-wise, round-wise or polling station-wise. Entries made in Part-II of Form No. 16 were reflected in Form No. 20 and no complaints were received at any time regarding the alleged discrepancy; refuted the allegation that records have been manipulated so as to favour the first respondent.

The petitioner was provided with sufficient time to set out reasons for re-count and not being satisfied with reasons mentioned in the application filed for re-count, the request for re-count was rejected in accordance with law. Application filed after the decision was of no use. The allegation that at that juncture there was a phone call from Sri Deshmukh and he held out a promise that that application would be rejected was denied as false.

Though this respondent is ordered to be deleted—vide order dated 13-6-1985—for proper appreciation of evidence, his defence is summarised.

The first respondent in his written statement besides denial of averments, narrated as to how appointment of counting staff was done and explained the procedure adopted for counting of ballot papers. First respondent, inter-alia, contended that main relief of re-count cannot be granted on vague and general allegations of irregularity in counting of ballot papers unless specific instances of material facts were alleged and proved. In other words, petition lacked material particulars on which relief of re-count could be granted.

Returning Officer and Assistant Returning Officers were appointed by Election Commission under Section 22 of the Act. Assistant Returning Officer was entitled to perform and or discharge the functions of Returning Officer subject to control of Returning Officer. He denied that persons mentioned at para IV of the petition functioned as Assistant Returning Officer in scrutinising the ballot papers; they functioned only as counting supervisors and assistants; Assistant Returning Officers, on scrutiny of doubtful ballot papers took decision in the presence of counting agents or candidates and in fact, no decision was taken by counting supervisors nor were they allowed to take a decision regarding the validity of doubtful ballot papers.

Arrangement of counting tables were strictly in accordance with the modalities provided in paras 5 and 9 of the Hand Book for Candidates. Candidates were permitted to appoint as many counting agents as there were counting tables with an addition of one to watch counting at Assistant Returning Officers table, as per Rule 52 and instructions contained in para 4 of Chapter IX of the Hand Book. For counting of ballot papers of Bijapur Assembly segment at 17 tables, candidates were permitted to appoint 18 counting agents.

Entry of unauthorised persons was denied; at the time of issue of badges, table numbers were assigned to counting agents; no hostile treatment was given to counting agents of the petitioner and no favour was shown to counting agents of first respondent. Counting agents of first respondent, at no time, misbehaved or conducted in a manner, unbecoming of counting agents, warranting severe action under Rule 53(4). As there were no complaints of whatsoever from any quarters, there were no occasion to take action against counting agents. The allegation that the absence of Sri Basha, Khandigal

@David, Assistant Returning Officer and other Supervisors manipulated entries and counted invalid ballot papers as valid in his favour was denied.

Returning Officer took up counting of ballot papers in the first instance in the Chambers of the Principal of the College where he had been seated in the presence of candidates/election agents. Allegation that neither the petitioner nor his counting agent V. M. Katti was allowed to note down the serial numbers of postal ballot papers rejected nor any reasons assigned for rejection was denied.

In sorting of ballot papers compartment-wise, no irregularity or illegality was committed by counting staff. Rules did not stipulate for providing of separate trays to each candidate, discretion was given to Returning Officer to make arrangement for counting and in fact, counting was done strictly in accordance with the guidelines provided in the Hand-Book; trays were divided into compartments and there was no possibility either for mixing up of ballot papers of one candidate with that of the other or to put ballot papers of petitioner in the compartment earmarked for first respondent and vice-versa. There was no prohibition for counting agents to note down the serial numbers of ballot papers; it was asserted that most of the counting agents of petitioner were making notes at their respective counting tables; allegation that counting supervisors were making entries in Parts I and II of Form No. 16 were denied. He pleaded further that in the absence of particulars of counting table, name of officers who were making such entries, round or rounds in which such entries were made counting hall where such irregularities were committed, it was not possible to controvert those allegations. Counting Supervisors and Assistants correctly sorted ballot papers contained in ballot box candidate-wise to respective compartments of the tray; according to votes recorded on the ballot paper, ballot papers apparently invalid or doubtful were placed in a tray separately meant for doubtful ballot papers. On completion of sorting of votes of each polling station, counting supervisor used to fill up Part-II of Form No. 16, valid votes bundled into 50 each and doubtful ballot papers were sent to Assistant Returning Officer table; Assistant Returning Officer was taking a decision in respect of doubtful ballot papers in the presence of counting agents as to whether it should be treated as valid or invalid, making plus and minus in entries made in Part-II of Form No. 16 depending upon validity or otherwise. Wherever Assistant Returning Officer has taken a decision to reject a ballot paper as invalid, he has assigned reasons. As all these were done in the presence of counting agents; his counting agents could have noted the serial number of ballot papers in respect of which they had raised objections, the nature of objection and decision thereon. Likewise, they could have given serial numbers of the ballot papers which were improperly received as valid in favour of first respondent. If petitioner was not in a position to furnish these particulars, the averment that about 8,000 out of 11,983 rejected ballot papers should have been counted as valid in favour of petitioner was only a figment of imagination, partisan attitude to counting staff denied. Alleged discrepancies between entries in Form No. 20 and Part-I and Part-II of Form No. 16 denied. Part-I of Form No. 16 were filled up by Presiding Officers at polling stations. Counting supervisors were only filling up Part-II of Form No. 16. Assistant Returning Officers after scrutiny of doubtful ballot papers were making additions and subtractions and initial Part-II of Form No. 16. Polling agents of petitioner were furnished with a true copy of Part-I of Form No. 16 by Presiding Officers of respective polling stations immediately on completion of poll, if not furnished polling agents could have, as of right, demanded and collected Part-I of Form No. 16 from Presiding Officer.

Supply and non-supply of certified copies were not within his knowledge; on account of such lapses, it was not possible to infer that Returning Officer has manipulated the records in favour of the respondent. Allegation that petitioner was not furnished with round-wise results do not merit consideration; the Act and Rules did not contemplate maintenance of voting statistics round-wise, hence, petitioner could not have been furnished with certified copy of round-wise results. Allegations pertaining to discrepancies between entries in original records and certified copies furnished to petitioner contained in paras 26 to 32 of Para IV of the petition were denied. In the ab-

sence of particulars of variation as between entries in Form No. 16 and Form No. 20, it was not possible to controvert those allegations.

Returning Officer was not under an obligation to announce result on completion of each round of counting. The averments that on completion of sixth round, Returning Officer announced that petitioner was leading and released to press and broadcast in Radio were denied. There was no presumption, if petitioner had secured more votes than the first respondent in earlier rounds, he should have necessarily secured more votes in subsequent rounds also.

With reference to allegations contained in para 28, it was stated that those allegations without production of Form No. 15 were vague and indefinite. Petitioner, in fact, was provided with sufficient time to file an application for re-count; setting out grounds on which re-count could be ordered. Allegation that Sri Deshmukh and petitioner closetted with Returning Officer for a period of half an hour and the entire complex of counting changed thereafter and Returning Officer held out a promise to Deshmukh that application filed for re-count would be rejected were denied. He justified the order of refusal for re-count.

Counting staff discharged their duties strictly in accordance with law and guidelines provided in the Hand Book. At no time, he sought for their aid or help in furtherance of the prospects of his election; Counting Staffs were not appointed either at his instance or at the call of Sri Deshmukh. Impersonation alleged at para 31 and rigging alleged at para of the petition were denied.

First respondent has filed a recrimination petition under Section 97(1) and (2) of the Act claiming re-count of all the ballot papers more or less on the same grounds on which petitioner has sought for re-count, in case, reliefs to petitioner were to be granted. In the recrimination petition he had pleaded that election campaign of election-petitioner was headed by Sri B. M. Patil, Vice-President of Karnataka Pradesh Congress Committee. He was also the Secretary of B.L.D.E. Association running number of Educational Institution's Sri B.M. Paul and Election-petitioner had so manipulated that large number of employees working in those institutions were appointed as Presiding Officer in furtherance of the prospects of election of petitioner Polling Officers, polling assistants in order to oblige Sri B. M. Patil permitted impersonation especially in Tikota assembly segment where there were large number of lambani voters; polling officers themselves have marked ballot papers in favour of petitioner at several polling booths located in Lambani Thandas to which, access by polling agents of the recrimination petitioner/respondent No. 1, was impossible. Polling officials with a view to furthering the prospects of election petitioner permitted impersonation of voters by allowing persons to vote in place of dead persons and persons who were not in station on the date of election; large number of valid ballot papers which the recrimination petitioner had received were rejected as invalid on flimsy grounds. Valid ballot papers of recrimination-petitioner were rejected as invalid because of thumb impression or smudge impression caused by an ignorant voter at the time of fold it; ballot papers of election-petitioner of like nature were treated as valid.

The petitioner in reply contended that recrimination petition was not maintainable. Averments that B. M. Patil and petitioner manipulated the appointment of large number of employees of his institution as polling officers and polling assistants in furtherance of the prospects of petitioner was denied. As recrimination-petitioner has not furnished particulars of polling station, name of officers and names of dead persons, it cannot be enquired into. He reiterated that impersonation has taken place at places mentioned in petition and rejection of his valid ballot paper on the ground that they bore thumb impression or smudge impression was illegal.

On the basis of these pleading following issues were framed:—

- 1- Whether the first respondent or his Election Agent or any other person with the consent of the 1st res-

- pendent or his election agent has committed any corrupt practice ?
2. Whether the result of the election in so far as it concerned the 1st respondent has been materially affected:—
 - (i) by any corrupt practice committed in the interest of the 1st respondent by an agent other than his election agent; or
 - (ii) by improper reception, refusal or rejection of any vote or the reception of any vote which is void; or
 - (iii) by non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951, or of any Rules or Orders made under the 1st respondent ?
 3. Whether Sri J. S. Deshmukh, the then Minister for Power, Government of Karnataka, was an agent of the 1st respondent ?
 4. Whether the counting of the votes has been conducted in violation of the provisions of the Representation of the People Act, 1951, the rules framed thereunder and the Instructions in the matter of counting issued to the Returning Officers?
 5. Whether the petitioner is entitled for recounting of the votes polled?
 6. Whether the 1st respondent has committed any corrupt practice within the meaning of sub-section (7) of Section 123 of the Representation of the People Act, 1951 ?
 7. Whether the Election of the 1st respondent is liable to be declared as void ?
 8. Whether the petitioner is entitled to be declared as having been duly elected ?
 9. Whether the petitioner is not entitled for a declaration as having been duly elected on the ground enumerated in Section 100(1)(d)(ii) of the Representation of the People Act, 1951 as urged by the 1st respondent in his recrimination petition ?
 10. Whether the votes polled by the petitioner has been affected by improper reception or the reception of any vote which is void ?
 11. What order?

Petitioner examined as many as 21 witnesses and produced Exhibits P-1 to P-745. First respondent examined his election agent and closed his case. List of witnesses examined and documents marked are enclosed to this judgment.

Issues 1, 2(i), 3 and 6 may conveniently be dealt with as all of them relate to alleged commission of corrupt practice by first respondent/election agent or agent

Relevant overments on this aspect in para 44 of the petition read thus :—

"The petitioner further submits the Respondent-1 has been guilty of committing corrupt practice under Sec. 123(7) of the Act, in obtaining the assistance of the persons who are in the service of the State Government for the furtherance of the prospects of Respondent 1's election. The services of the following officers have been made use of by the Respondent No. 1 and with his consent the following officials have worked for Respondent-1.

1. Shri J. N. Charbey, Deputy Commissioner and Returning Officer, Bijapur.
2. Shri P. S. Mallapur, Tahsildar of Muddebihal taluka
3. Shri S. V. Kodagali, Block Development officer, Muddebihal.

4. Shri Basavaraj Gadwal, Assistant Executive Engineer Muddebihal.

5. Shri H. P. Shellikeri, Commissioner, City Municipal Council, Bijapur.

The persons referred to above particularly two of them by name Shri P. S. Mallapur and Shri H. P. Shellikeri, were appointed by the Returning Officer to work as Assistant Returning Officers and from the beginning these officials were partial and acted as Agents of Respondent-1 and helped him in his election prospects."

It was alleged that Mallapur and Shellikeri assisted Returning Officer, on receiving instructions from Sri J. S. Deshmukh. Appointment of two persons at each segment to assist Assistant Returning Officer or his choice in scrutiny of doubtful ballot papers was contrary to law. Returning Officer was responsible for keeping counting agents of respondent by name Hussain Baha, K. Salodagi and Kandaga (David), under surveillance. Sri Mallapur was actively canvassing in favour of first respondent to electorates by name Sri Basvaraj Kattimani Basavaraj Sanjan and G. B. Hagargund at Muddebihal.

In para 48 of the petition, it was pleaded that polling officers themselves exercised their franchise impersonating voters at polling stations mentioned therein. Neither the petitioner nor his election agent (P.Ws. 21 and 20) have deposed that polling officers at those polling stations committed impersonation in furtherance of prospects of election of first respondent. Neither the polling agents present nor any voter who was so deprived of exercising his franchise have been examined to establish impersonation by polling officials. Hence, there is no proof to establish impersonation by polling officials.

Sri P. S. Mallapur, Sri H. P. Shellikeri and Sri J. N. Chaubey against whom allegations of rendering assistance were made, have been examined as P.Ws. 1, 6 and 2 respectively. No where they whisper rendering of assistance to first respondent or aid of whatsoever in furtherance of the election. On account of petitioner examining them as his own witnesses, first respondent has been denied an opportunity of examining them to refute these allegations. In fact, Returning Officer in his written statement has denied all these allegations. Even then, petitioner has not chosen to elicit any favourable answer on this aspect. The petitioner has not even elicited from P.W.2 as to whether he had the knowledge of polling officials and/or counting staffs working in institutions which were under the control and management of Sri Deshmukh. If petitioner had entertained or apprehended any favouritism, bias, partiality, he should have objected to as soon as their names were notified on 14-12-1985 appointing them as counting staff. There is no evidence on record to show as to how many counting staff were employed in the institutions which were under the control and management of Sri Deshmukh. Sri Katti, an election agent of petitioner, has not testified the method or manner of aid or assistance rendered by the officials mentioned in para 44 in furtherance of the prospects of the election of first respondent.

Supreme Court in K. Prabhakara Rao-v-M. Seshagiri Rao (A.I.R. 1981 S.C. 658) has held thus :—

"Where there was absolutely no allegation in the pleadings to show that at any time after having filed his nomination papers, the candidate made any efforts to seek the assistance of the Tahsildar in furthering his election prospects or in any way helping him to win the election the allegation of corrupt practice of seeking assistance of public officer for furthering one's election prospects could not be sustained for want of necessary particulars required by law"

Supreme Court in K. M. Mani-v-P. J. Antony (A.I.R. 1979 S.C. 234) has held thus :—

"An allegation regarding the commission of a corrupt practice at an election is a very serious matter not only for the candidate but for the public at large as it relates to the purity of the electoral process..... Besides furnishing the precise material relating to the allegation to the election Court, it has the advantage of giving the respondent an opportunity of meeting a precise allegation."

"Further, even a police officer whose assistance has been prohibited under sub-section (7) of Section 123 of the Act, is nonetheless a citizen and an elector, and is entitled to have his own belief that particular candidate would win, and to express that belief, without lending an impression that it was meant to assist him in the election in any manner."

Neither the pleadings extracted above, nor the evidence is sufficient to record a positive finding on these issues.

Out of the remaining issues, the 5th is the main issue and others are ancillary or subsidiary thereto.

Necessary averments on which relief of re-count was based read thus :—

"2. That in all the segments coming under 20-Bijapur Parliamentary Constituency, when we compare Form No. 20 Part-I & II maintained by the Returning Officer, there have been innumerable mistakes and one does not tally with the other in any one of the segments, either totalwise or candidatewise."

"22. There has been lot of discrepancies in the records pertaining to counting viz., Form No. 16 Part 1 and 2, Form No. 20".

"23. That, as per certified copy of the Form No. XX the official result sheet produced herewith marked as ANNEXURE-D, total number of rejected votes in Col. No. 12 is 11,998, whereas as per the records maintained by Returning Officer, Respondent No. 9, it is only 11,994."

"24. The petitioner had applied for the grant of certified copy of Form-20 but for the reasons best known only certified copy of segmentwise official result alone was furnished as on 31-12-1984. When a demand was again made by a letter dated 4-1-1985 polling stationwise information in Form No. 20 was given, though the Returning Officer ought to have given the same in the earlier instance itself. The petitioner apprehends that this was so done to manipulate the records. That apart, even while giving certified copy of the polling stationwise result, the certified copy of the polling station result, the certified copy of roundwise result was not given except for Indisegment. In so far as the remaining seven segments are concerned, even till today, the Returning Officer has not given the roundwise Results. In Muddebihal segment, the number of rejected votes mentioned in Col. 12 is 133, but in the original records of Form No. 20 in the office of the Returning Officer comes to 1313. It is not known as to what happened to these 2 votes which does not even find a place in the official result. There is a discrepancy of 2 votes pertaining to rejected votes in so far as the Muddebihal segment is concerned. That in Huvina Hippargi Segment, as per Annexure-D the number of rejected votes is shown as 1555, whereas in the original Form No. 20 records maintained in Col. No. 12 of Form No. 20, the total comes to 1550. Thus there is a discrepancy of 5 ballot papers. In 224 Sindagi Segment vide Annexure-D the total number of votes rejected is 1686, whereas in the records maintained by Respondent-9, it comes to 1685. There is therefore a difference of one ballot paper. That apart, the total number of rejected votes in Annexure-D is shown as 11,998. But the total number of ballot papers rejected as per the records of respondent 9, it is 11,994. Thus there is a discrepancy of four votes. It is not known as to where these votes have gone and in whose favour they have been counted and this discrepancy cannot be reconciled unless a recount of entire ballot papers are made."

"25. That out of these 11,998 rejected votes not less than 8,000 votes marked in favour of this petitioner have been arbitrarily rejected."

"26. While counting the total votes as indicated in Annexure-D pertaining to the petitioner, the total votes secured by the petitioner, is shown as 21,017 in Col. 5 for Muddebihal whereas in the records maintained by R 9 it is shown as 20,981 and thus there

is a discrepancy of 36 votes. In Huvina Hippargi Segment, the total votes secured by the petitioner is shown as 27,457, as per Annexure-D, whereas in the records maintained by R-9, it is shown as 27,357 and hence there is discrepancy of 100 votes. In Basavana Bagowadi Segment as per Annexure-D, the total votes secured by the petitioner is 24,047, while in the records maintained by Respondent-9 it is 24,048 and thus there is a discrepancy of one vote. In so far as 223-Indisegment is concerned, the total votes secured by the petitioner is shown as 23,926 in Annexure-D, whereas in the records maintained by Respondent-9, it comes to 24034 and there is a discrepancy of 108 votes."

"27. Similarly the total votes secured by the Janatha Party candidate i.e., Respondent No. 1 in Muddebihal segment as per Annexure-D is 27,634, whereas as per records maintained by Respondent-9, the total comes to 27,673 and thus there is a discrepancy of 39 votes. In Huvina Hippargi Segment, the total votes secured by respondent-1 as per Annexure-D is 24,619 whereas in the records maintained by Respondent-9 it comes to 24,599 and as such there is a difference of 20 votes. In 220 Tikota segment, the total votes secured by Respondent-1 as per Annexure-D is 19,828 whereas as per records maintained by Respondent 9 it comes to 19,728 and thus is a difference of 100 votes. In 224-Sindgi segment, the respondent-1 had secured a total votes of 28,484 as per Annexure-D, whereas in the records maintained by Respondent-9, it comes to 28,544 and thus is a discrepancy of 60 votes."

"28. That the total votes secured by other seven candidates all put together as per Annexure-D comes to 1,333 in respect of Muddebihal segment while the total in the records maintained by Respondent-9 it comes to 1,334 making a difference of one Vote. In Huvina Hippargi segment as per Annexure-D the total votes secured by all the other 7 candidates put together is 1,897 while as per the records maintained by Respondent-9 it comes to 1,901 and thus there is a difference of 4 votes. In Basavana Bagowadi segment as per Annexure-D, the total number of votes is shown as 2,369 whereas as per the records maintained by Respondent-9 it comes to 2,398 and thus there is a difference of 29 votes. In 221-Bijapur segment under Annexure-D, the total votes is shown as 1,388 whereas in the records of Respondent-9 it comes to 1,397 and there is a difference of 9 votes. In 222-Ballolli segment under Annexure-D, it comes to 1,621 votes, whereas as per the records maintained by Respondent-9 it comes to 1,625 and thus there is a discrepancy of 4 votes. In 223-Indisegment the total votes in Annexure-D comes to 1,644 whereas in the records maintained by Respondent-9 it comes to 1,655 showing the discrepancy of 12 votes. In Sindgi segment as per Annexure-D the total votes comes to 2,315 whereas it is 2,316 in the records maintained by Respondent-9 and there is a difference of one vote."

"29. Thus neither the votes secured by the petitioner nor Respondent No. 1 or for that matter all other remaining 7 candidates put together do not tally with one another either roundwise or segmentwise or totalwise. The entire thing is done in a mess and in post-haste manner to suit their convenience and to see that it benefited respondent-1."

"30. The petitioner further submits that the total votes secured in each of the segments as per Annexure-D and the total votes as per the records maintained by Respondent-9 do not tally and there is discrepancy in each segment."

"31. Thus, it is seen that in all the segments coming under 28-Bijapur Parliamentary Constituency on their own showing, there has been irreconcilable mistakes and one does not tally with the other in any one of segments either totalwise or individually and hence this is a case in which the entire ballot papers have to be recounted and the results declared after such recount."

No where, there is a reference to discrepancies amongst ballot papers used, unused and actually counted i.e. the discrepancies between entries made in Part-I and Part-II of Ballot paper Account Form No. 16, though an attempt has been made to highlight discrepancies between entries in Annexure-D to the petition (Certified copy of Form No. 20 segmentwise which later on has been marked as Ex. P-527) and original Form No. 20. There is a casual reference here and there that entries in Forms No. 20 of various segments do not tally with entries made in original records of Returning Officer. A reading of these averments gave an impression that there was an attempt to improvise facts so as to overcome the dictum of Supreme Court Sharma's case.

Under law, a person seeking recount and scrutiny of ballot papers is required to give a concise statement of material facts on which relief of re-count is based. Petitioner, except making vague and general allegations of improper rejection of valid votes cast in his favour and improper acceptance of valid votes in favour of first respondent, has not furnished serial numbers of ballot papers improperly rejected or improperly accepted polling station numbers, table number at which such irregularities or illegalities were committed. If it was a case of miscount or wrong-count, particulars of miscount, segment, table and polling station numbers at which such miscount was done should have been pleaded.

According to Section 83 of the Act, "election petition must contain concise statement of material facts and the fullest possible particulars. 'The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material facts leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet'".

Supreme Court in *RAM SEWAK-v-H. K. KIDWAI* (AIR 1964 SC 1249) after referring to procedure prescribed for counting of ballot papers in detail thus :—

"8. It must be remembered that the rules framed under the Representation of the People Act, 1951, set up an elaborate machinery relating to the stage of counting of votes by the returning officer and provide ample opportunity to the candidate who has contested the election or his agents to remain present and to keep an eye on any improper action which may be taken by the returning officer. Rule 53 provides for the admission of only certain classes of persons to the place fixed for counting and amongst such persons are expressly included candidates, their election agents and counting agents, who may watch the counting subject to the directions which the returning officer may give. Rule 55 deal with the procedure for scrutiny and opening of ballot boxes. The returning officer has to satisfy himself that 'none of the ballot boxes has in fact been tampered with' and before any ballot box is opened at the counting table, the counting agents present at that table are allowed to inspect the seal affixed thereon and to satisfy themselves that it is intact. If the returning officer is satisfied that an ballot box has in fact been tampered with, he is prohibited from counting the ballot papers contained in that box and he has to follow the procedure prescribed in that behalf in S.58. Clause (1) of R.56 provides for the scrutiny and rejection of ballot papers. Clause (2) set out detailed provisions relating to cases in which the returning officer shall reject a ballot paper. By cl. (3) it is provided that before rejecting any ballot paper under sub-rule (2), the returning officer shall allow each counting agent present a reasonable opportunity to inspect such ballot papers. The returning officer has then to record on every ballot paper which he rejects the grounds of rejection. All the rejected ballot papers are required to be put in one bundle. Rule 57 deals with the counting of votes. Each ballot paper which is not rejected is counted as one valid vote. The returning officer has to make the entries in a result sheet in Form 20 after counting of the ballot papers contained in all the ballot boxes used at the polling stations. Clause

3 of Rule 57, enacts an elaborate set of rules about the entries to be made in respect of the counting and scrutiny of the ballot papers. By R.60 counting has to be continuous and R.63(1) provides that after the completion of the counting, the returning officer shall record in the result sheet in Form 20 of the total number of votes polled by each candidate and announce the result. By cl. (2) of R.63 it is provided that after such announcement is made, a candidate or his election agent may apply in writing to the returning officer for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount. The returning officer must decide the application and record his reasons in support of his decision and he may allow the application in whole or in part or may reject it if it appears to him to be frivolous or unreasonable. After the total number of votes polled by each candidate has been announced, the returning officer must complete and sign the result sheet in Form 20 and after such form is completed no application for recount may be entertained. Under R.64 the declaration of the result of the election is made by declaring elected a candidate who has secured the largest number of valid votes, and the returning officer is required to complete and certify the return of election.

9. There can therefore be no doubt that at every stage in the process of scrutiny and counting of votes the candidate or his agents have an opportunity of remaining present at the counting of votes watching the proceedings of the returning officer, inspecting any rejected votes, and to demand a recount. Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception, refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the matter in which the ballot boxes were scrutinized and opened and the votes were counted. He has also opportunity of inspecting rejected ballot papers, and of demanding a recount. It is in the light of the provisions of S.83(1) which require a concise statement of material facts on which the petitioner rules and to the opportunity which a defeated candidate had at the time of counting, of watching and of claiming a recount that the application for inspection must be considered."

has stated that petition must contain adequate statement of material facts.

Observations in *JITENDRA BAHADUR-v-KRISHNA BEHARI* (AIR 1970 SC 276) :

"In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information. It is not his case that they maintained any notes or that he examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as to afford a basis for the allegation made in the petition. The facts stated in paragraphs 13 and 14 of the Election Petition and in Schedule 'E' are mere allegations and are not material facts supporting those allegations."

and in *BELIRAM-v-JAI BEHARI LAL* (AIR 1975 SC 283):

"45. Since the pronouncement of this Court in *Ram Sewak Yadav-v-Hussain Kamal Kidwai*, (1964) 6 SCR 238 (AIR 1964 SC 1249) it is settled law that sections 10(1)(d)(iii), 101, 102 of the Act and Rule 93 of the Conduct of Election Rules, 1961 implicitly give the Court trying an election petition the power to order a recount or production of the ballot papers and permit their inspection by the parties. Since an order for a recount touches upon

the secrecy of the ballot, it should not be made lightly or as a matter of course. Although no caste iron rule of universal application can be or has been laid down, yet, from a beadrill of the decisions of the court two broad guidelines are discernible : that the Court would be justified in ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequate in the election petition, and (ii) the Court/Tribunal trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to complete and effectual justice between the parties."

"46. In the present case neither of the tests above mentioned has been satisfied. The allegations in the petition are not precise. They are mostly general and vague floating on suspicious and beliefs of the petitioner, rather than resting on terra firma of material facts. As was stressed in Ram Sewak Yadav's case (1964) 6 SCR 238 (AIR 1964 SC 1249) (supra), mere allegations that the petitioner suspects or believes that there has been improper reception, refusal or rejection of votes or there have been irregularities in the counting of ballot papers will not be sufficient to support an order of recount and inspection. It is an irony of things that in elections, as in horse racing sure beliefs, hopes and expectations of the contestants often and up as also rans. The allegations of irregularities in counting appearing in the petition stem from such a 's re' belief turned 'unsure'."

proportionate apply to the facts of the present case.

Citing instances of non-supply of certified copies of Form No. 16 and delay caused in insurance of certified copy of Form No. 20 (vide para 24 of the petition) petitioner probably wanted an excuse for not pleading specific ground on the basis of which re-count could be ordered.

Unfortunately, Rule 45 of the Conduct of Election Rules, which reads thus :—

"45. Account of ballot papers.—(1) The Presiding Officer shall at the close of the poll prepare a ballot paper account in Form 16 and enclose it in a separate cover with the words 'Ballot Paper Account' superscribed thereon.

(2) The Presiding Officer shall furnish to every polling agent present at the close of the poll a true copy of the entries made in the ballot paper account after obtaining a receipt from the said polling agent thereof and shall also attest it as a true copy."

will not absolve him of his obligation to plead material facts. As polling agents of all candidates have been furnished with ballot paper account Part-I of Form No. 16 ; they were aware of discrepancies, if any, between used and unused ballot papers. Consequently, they had opportunity to verify the accuracy at the time of counting, as and when entries were made in Part-II. It was not even his case that such Ballot Paper Account forms were not given to him. The object of furnishing ballot paper account, Part-I of Form No. 16, was to enable a candidate to verify whether all the ballot papers contained in the ballot box, as entered at item No. 5 of Part-I were actually counted and in case of discrepancies it was required to be noted in the last column i.e., "whether the total number of ballot papers shown against item No. III of Part-II tallied with the total shown at item No. 5 of Part-I or were there any discrepancies." Petitioner averments extracted above neither advert to discrepancies between ballot papers used at particular polling station/s and ballot papers actually counted nor discrepancies in ballot papers received at a polling station, unused and used, as are entered at items 1, 2, 3 and 5 of Part-I of Form No. 16.

Likewise, I find no substance in the grievance made regarding non-supply of certified copy of Form No. 20-round-wise. As perform prescribed, Returning Officer was required to record the result of voting polling station-wise and assembly segment-wise-vide Parts-I and II of Form 7748 GI 88—2

No. 20 respectively and preparation of final result sheet round-wise is not contemplated. In the absence of specific instances of irregularities or illegalities in counting, segment at which the irregularity or illegality was committed, polling station or the table at which such irregularities were committed, trial if any, will be bordering on rowing or fishing enquiry.

In this context, it is necessary to bear in mind the observation of the Supreme Court in S. BALDEV SINGH-V-TEJA SINGH (AIR 1975 SC 693) which reads thus :—

"Disingenuous averments do not promote prospects of judicial recount and will be dismissed as devices to comply with recruitments suggested in some ruling or other."

Since parties have let in voluminous evidence, instead of deciding this case in the light of the decisions referred to above, I propose to deal with these issues on merit—assembly segment-wise.

BIJAPUR SEGMENT

Sri Holabesappa Padadappa Shellikeri, Assistant Returning Officer, incharge of No. 221 Bijapur Assembly Segment has been examined as P.W. 6. He has stated that counting took place in Room No. 17 of the Commerce College. Arrangements were made in accordance with the instructions contained in the Hand Book. There was an order by the Returning Officer to increase the counting tables from 15 to 17 with assignment of counting staff. He assigned table number to the counting agents and accordingly, table numbers are mentioned in Form No. 18 in which candidates have appointed their counting agents.

Counting started at 8 a.m. ; before commencement of counting, read over Section 128 of the Representation of People Act to persons present in the Counting hall, counting started with distribution of ballot boxes to counting tables in serial order of polling stations and with supply of relative ballot paper account Form No. 16. There were two counting assistants and counting supervisor at each counting table. A Tahsildar, a Sheristedar and one other officer assisted him in the scrutiny of doubtful ballot papers.

There were six trays on each counting table ; one for petitioner, one for first respondent, the other trays divided into compartments for remaining candidates and doubtful ballot papers were placed in the last compartment. Counting Supervisors after being satisfied that both outer seal and inner seal of ballot boxes were intact and verifying the correctness of polling station number which were assigned, opened them in the presence of counting agents. There were in all ten rounds of counting. Counting Supervisors and counting assistants after unfolding of ballot papers contained in the box, started sorting candidate-wise to respective compartments of tray, according to votes recorded on the ballot paper. Supervisors used to place all doubtful ballot papers as well as apparently invalid ballot papers in a compartment earmarked for placing of doubtful ballot papers. They were not deciding the validity or other wise of the doubtful ballot papers. On completion of sorting, the ballot papers in the respective compartments were numerically counted and bundled into 50 each. On a check-slip, name/s of candidate/s and number of votes secured were written, apart from filling up of Part-II of Form No. 16. The bundle of valid ballot papers including the bundle of doubtful ballot papers with Form No. 16 were brought to his table and kept in a pigeon-hole earmarked for the purpose. He scrutinised the doubtful ballot papers and made necessary variations in Part-II of Form No. 16, making plus and minus depending upon its result and signed Part-II of Form No. 16.

He has deposed that all the ballot papers contained in the ballot box were taken out and counted ; no ballot paper remained unaccounted ; no body complained that the ballot papers of polling station No. 41 were not counted. He took decision in respect of all doubtful ballot papers. He has assigned reasons wherever ballot papers were rejected as invalid. On being satisfied about the tabulation made by his assistants, he has signed Form No. 20 ; he permitted the counting agents to make note of serial numbers of the ballot papers including reasons assigned for rejection.

There was no disturbance whatsoever at the time of voting. Consequently, there was no occasion to send any counting

agents outside the counting hall and no police came to the counting hall to remove any of the counting agents of petitioner. He has stated that the Returning Officer visited the counting hall about twice or thrice. He has also spoken of the random check of valid ballot papers kept in the pigeon-hole to verify the possibility of mixing up of valid ballot papers of one candidate with the other. He has also stated that he did not announce the result/votes secured by each candidate on completion of each round of counting. He has also stated that the Returning Officer ascertained from him before announcement of result as to whether there was any complaint regarding counting in counting hall, counting was completed by about 6-15 p.m. and handed over Form No. 20 to Returning Officer. He was present in Returning Officer's room till results were declared.

Sri Kandgal alias David who was the counting agent of table No. 16 has been examined as P.W. 10. According to him also, there were six trays on each counting table, divided into compartments. He has deposed that compartments of petitioner and first respondent were adjoining. Consequently, often valid ballot papers of the petitioner used to get mixed up with that of the first respondent's ballot papers; protest made to rectify the error did not yield any result. Both rejected and doubtful ballot papers used to be placed in the same compartment.

Ballot papers with thumb impressions or smudged impressions caused inadvertently by an Elector while handling it, because of the presence of some ink and ballot paper in which major portion of 'x' mark was within the column of the petitioner were treated as doubtful ballot papers; in each round of counting about 3-4 ballot papers of such types were treated as doubtful; whereas ballot papers of first respondent of the same nature were treated as valid.

Counting staff did not show him as to whether seals put on the ballot boxes were intact or not; he was not even informed the polling station number of which they were counting. He informed Sri Shellikeri of all these irregularities. He admitted that there was no counting agent of petitioner as Assistant Returning Officer's table. He has informed Sri Katti, Election Agent of petitioner about the commission of these irregularities in the process of counting when he had come to the counting hall. He further stated that when he protested, he was driven out with the assistance of police and allowed to re-enter after half an hour. One Hussain Basha Salodgi, P.W. 11, Counting agent of table No. 10 was also driven out for the same reason and permitted to re-enter after half an hour. He admitted that Returning Officer had come to the counting hall at about 3 p.m. He has stated that a person belonging to Janatha Party had brought a transistor to counting hall and heard a broadcast from All India Radio announcing that petitioner was leading. That was after 8th round of counting. Immediately thereafter, few Janatha workers unauthorisedly entered the counting hall and caused disturbance. As a result of which, it was not possible to watch carefully the counting. He has also stated that he was not permitted to make note of serial number of the ballot papers which were treated as doubtful or rejected and denial of such an opportunity was complained in writing before the Returning Officer.

Sri Thilppanna Agasar, counting agent of petitioner at table No. 1 has been examined as P. W. 13. According to him, there were only four trays on his counting table which were divided into compartments. He also states that on account of the compartments earmarked for petitioner and first respondent adjoining each other, often the ballot papers of petitioner used to get mixed up with the ballot papers of first respondent. Ballot papers with thumb impressions or smudged impressions caused inadvertently by an Elector on the ballot paper while handling it because of the presence of some ink; some of the ballot papers in which major portion of the 'x' mark was within the column of the petitioner were treated as doubtful ballot papers; in each round of counting about 3-4 ballot papers of such types were treated as doubtful; whereas ballot papers of first respondent of the same nature were treated as valid. Counting staff did not show him as to whether seals put on the ballot box were intact or not and he was not even informed the polling station number of which they were counting. In addition, he has stated that some of the ballot papers which did not bear the signature of the Presiding Officer were also counted as valid

in favour of the first respondent. In each round of counting about 4 to 5 of such ballot papers of the petitioner were treated as doubtful. He did not verify as to whether the same irregularities were being committed at other tables or not in that hall. He stated that he informed the Returning Officer who had visited the counting hall at 10 a.m. and also Sri Katti when he had come to the counting hall. He has stated that after 6th round of counting about 8-10 persons belonging to Janatha Party, unauthorisedly, entered the counting hall and started disturbance; as a result of which, it was not possible for him to watch the counting. He has deposed that he was not permitted to note down the serial numbers of the ballot papers which were treated as doubtful or mixed up with that of the first respondent or serial numbers which were rejected including the reasons assigned for rejection.

Sr. Katti, Advocate, who functioned as election agent of petitioner has been examined as P.W. 20. This witness except referring to the contents of petition was hesitant to testify with facts and figures and justify the claim for recount. To illustrate, he stated at para 14 of his evidence that discrepancy in entry of votes polled, as found in these various forms are set out in detail in paras 23 to 30 of the petition. Total votes as entered in these various forms will not tally with the number of votes polled and/or candidates-wise. Discrepancies of votes as found from different segments of this Parliamentary constituency are set out in the petition. More than 8,000 votes secured by the petitioner have been treated as invalid. He has deposed thus :—

"20. I have set out particulars of ballot papers missing from various polling stations in para 38 of the petition. Particulars of bogus and systematic marking in respect of which, we objectors are set out in para 39 of the petition.

21. Particulars of officials who have rendered assistance to the first respondent are set out in paras 44 to 48 of the petition. Particulars of impersonation are set out in paras 49 to 51 and in addition certified copies of death certificate, are already ordered/exhibited."

He has stated generally that assistants attached to Assistant Returning Officers were mechanically installing on seals put by his subordinates. He has also stated that it was not possible to furnish serial numbers of the ballot papers which were rejected as invalid though valid and which were treated as valid though invalid in favour of first respondent as he and his counting agents were not permitted to make a note. He admitted that he has not noted the names of persons who unauthorisedly entered counting halls and caused disturbance. He has not complained in writing to any one for not enabling the counting agents of to note down the serial numbers of ballot papers.

Petitioner has been examined as P. W. 21. He stated that the particulars set out in election petition were based on information furnished by election agents and other counting agents. As he was not present in counting hall, he was not competent to speak of the alleged irregularities in counting.

P. Ws. 20 and 21 have not corroborated the version of P. Ws. 10 and 13. They have not even spoken to about the complaint made by those two witnesses regarding irregularities or illegalities committed in counting hall. Assistant Returning Officer (P. W. 6) and Returning Officer, (P. W. 2) do not whisper a word about the receipt of complaint by any one of those witnesses. Learned counsel for petitioner having regard to the nature of oral evidence let in and the decision of Supreme Court referred to above, rightly did not place reliance on oral evidence, but laid stress on discrepancies in entries on various forms.

According to the Chart prepared by the petitioner segment-wise and polling station-wise, there were 7,079 excess and 4,519 shortages as per entries in Parts-I and II of Form No. 16. According to first respondent there were only 195 shortages and 58 excess. In view of these varying figures, it was not possible to act upon the Chart furnished by either side. Accordingly, proceed to examine the merit and demerit of the discrepancies segment-wise and polling-station-wise.

Learned counsel tried to establish that figure as entered in Form No. 20 do not tally either round-wise/polling station-wise or total-wise with reference to evidence of P.W. 6, Assistant Returning Officer and the documents marked through him. Oral evidence in respect of other segments also is more or less the same.

In Ex. P-543(B), ballot paper account of polling station No. 3, serial numbers of the ballot papers received used and unused are mentioned thus :—

	From	To	Total Nos.
1. Ballot papers received	321951	329710	660
2. Ballot papers unused	329551	329710	160
3. Ballot papers used at the polling station.	329051	329550	500

Total number of unused ballot papers and used ballot papers are correctly mentioned as 160 and 500 respectively. But, it is contended with reference to serial numbers mentioned against item No. 1 that the total number of ballot papers received at the polling station would be 7750 and not 660. Fortunately, serial numbers of ballot papers used at this polling station are correctly mentioned at item No. 3. Ballot paper bearing Sl. No. 321951 (shown to have received at this polling station has been already utilised at polling station No. 111 of Tikota segment—vide Ex. P-537 (ag.)). Serial numbers of the ballot papers received at polling station No. 111 of Tikota segment run from 321841 to 322710. Hence, ballot papers commencing with S. No. 321951 could not have been used at two polling stations. The serial number of the last ballot papers received at polling station No. 2 was 329050, hence serial number of the first ballot paper received at polling station No. 3 should start from 329051 and not 321951. Serial number mentioned as 321951 is an obvious error for 329051.

Ballot papers counted as per entries in Part-II of Form No. 16 are the same as entered in item No. 5 (ballot papers to be found in the ballot box) in Part-I and there is no discrepancy.

In Ex. P-543(f) ballot paper account of polling station No. 16, serial numbers of ballot papers received, used and unused are mentioned thus :—

	From	To	Total Nos.
1. Ballot papers received	337181	337790	610
2. Ballot papers unused without the signature of P.O.	33795	337790	296
Total	33795	337790	296
3. Ballot papers used at the polling station.	337181	33794	314

Contention of petitioner was that there was no accuracy re-used and unused ballot papers. Serial numbers of the ballot papers received at the polling station are correctly mentioned, total of which would come to 610. Unfortunately, in the column meant for indicating unused ballot papers, serial numbers have been reduced to five digits instead of six digits. Thereby the discrepancy runs to lakhs. Recital of serial numbers of unused ballot papers with five digits is an obvious error. This view is fortified by referring to serial numbers of the ballot papers used at polling station No. 15. Last serial number of the ballot papers received at polling station No. 15 vide Ex. P-543(e) was, 337180 and serial number of the first ballot paper received at polling station No. 16 should start from 337181 and in fact started with that serial number. Actual number of ballot papers used are counted.

Ballot paper account of polling station No. 20 is not marked as an exhibit. Serial numbers of the ballot papers received, used and unused are mentioned thus :—

	From	To	Total Nos.
1. Ballot papers received	339931	340610	680
2. Ballot papers unused	34376	340610	235
3. Ballot papers used at polling station.	339931	340375	445

Serial number mentioned as against item 2 ballot papers unused—starting with five digits and ending with six digits is an obvious error.

Ballot paper account of polling station No. 41 is marked as Ex. P-543(k). Total ballot papers received as per this exhibit are 630. Unused ballot papers with signature and without signature of the presiding officer are 213+13=226 and not 213 as mentioned therein. On deduction of 226 out of 630 total ballot papers received, total ballot papers to be found in the ballot box would be 404 and not 417. Total ballot papers counted as per entries in Part-II of this exhibit are 358. Thus, there is a shortage of 46 votes.

Ballot paper account of polling station No. 54 is not marked as an exhibit. Ballot papers received at the polling station are 910. Unused ballot papers with signature and without signature of Presiding Officer are 280+38=318 and not 312 as mentioned therein. Deducting 318 out of 910, used ballot papers or ballot papers to be found in the ballot box would be 592 and the same number of ballot papers are counted as entered in Part-II of the same form. There is neither excess nor shortage.

Ballot paper account of polling station No. 18 is marked as Ex. P-543(s). According to learned counsel, there is one excess. From this exhibit, which reads thus :—

	From	To	Total Nos.
1. Ballot papers received	370331	371100	770
2. Ballot papers unused	370350	370351	50
(a) with signature of PO	370351	370400	50
(b) without signature of P.O.	370401	370500	50
Total (a) + (b)	370551	370600	50
3. Ballot papers used at polling station.	370451	370500	50
	370501	370550	50
	370701	370750	50
4. Ballot papers used at PS but not inserted into ballot box.	370751	370800	50
(a) Ballot papers cancelled for violation of voting procedure u/r 39.	370901	370926	25
(b) Ballot papers cancelled for other reasons.	370331	370350	20
			445
(c) Ballot papers used as tendered ballot papers.	(a)	370423	1
			444

it is not possible to make out whether there is any excess or not. At any rate, this much is certain—total number of ballot papers to be found in ballot box as per Part-I are mentioned as 444 and in Part-II counted are mentioned as 445 showing excess of one ballot paper.

Ballot paper account of polling station No. 73 is marked as Ex. P-543(x). Contention of petitioner is that ballot papers counted are more in number than the contents i.e., exceed by one. Serial numbers of ballot papers used at polling station ran from 378741 to 379032 making a total of 292 and not 291 as entered therein. As serial number of the ballot paper start with one, we have to add one to the total that means 291+1=292. So, the entry at item No. 5 viz., ballot papers to be found in the ballot box should have been 292 instead of 291. Ballot papers counted as per entry in Part-II of this exhibit are 292. Hence, there is neither excess nor shortage.

Ballot paper account of polling station No. 99 is marked as Ex. P-543(ab). Total number of ballot papers used at the polling station are 414. One ballot paper bearing serial number 399239 is cancelled. So, ballot papers to be found in the ballot box would be 413 as entered at item No. 5 of Part-I. Same number of ballot papers are counted as per Part-II of Form No. 16 of this polling station. There is neither excess nor shortage.

Ballot paper account of polling station No. 118 is marked as Ex. P-543(a1). Contention of the petitioner is that ballot papers counted at this polling station are less than the ballot papers to be found in the ballot box i.e., less by 10. Total ballot papers received at the polling station are 710; total ballot papers unused with signature of Presiding Officer and without the signature of Presiding Officer are $32+250=282$. If unused 282 ballot papers are deducted out of 710, the total ballot papers to be found in the ballot box would be 428 and not 438 as entered therein. One ballot paper is treated as cancelled. So, ballot papers to be found in the ballot box would be 427 and not 437 as entered at item No. 5 of Part-I of this exhibit. In Part-II of this exhibit ballot papers counted are rightly mentioned as 427. The note that the ballot papers counted do not tally without verifying the correctness of the entries made in Part-I is an obvious error. There is neither excess nor shortage.

In Ex. P-543(a1) ballot paper account of polling station No. 128, serial numbers of the ballot papers received at the polling station run from 419131 to 420020, thereby the total number of ballot papers received would be 890. Serial numbers of the ballot papers used at polling station run from 419131 to 419738 making the total of 608 and not 618 as mentioned therein. Unused ballot papers with signature and without signature of the Presiding Officer are $62+220$ making the total of 282. If 282 unused ballot papers are deducted out of 890, total ballot papers to be found in the ballot box would be 608 and not 618 as entered at item No. 5 of Part-I of this form. Ballot papers counted as per Part-II of this form are 608. Unfortunately, the note made that there is a shortage of 10 ballot papers without verifying the correctness of the figures as entered in Part-I of this exhibit is a mistake. Thus, there is no discrepancy between the ballot papers counted and to be found.

There is a shortage of one vote each at polling stations Nos. 10, 44, 53, 65, 69, 104, 121, 135, 150, 152 and 153 and two at polling station No. 127. The discrepancies pointed out from Form No. 16 of polling stations Nos. 56, 73, 88, 113, 149 and 157 are not adverted to as they are not marked as exhibits.

On an analysis of ballot paper account of polling stations of this segment, it is noticed that there are shortages of 59 ($46+13$) and one excess at polling station No. 61.

Original Form No. 20 of this segment is marked as Ex. P-541. Certified copy of Form No. 20 is marked as Ex. P-542. Contention of petitioner is that the total votes polled as entered in Ex. P-542 fall short by 10. In Ex. P-541 total number of valid votes are mentioned as 65453 and rejected votes are mentioned as 1715 making a total of 67168. But, in Ex. P-542 total valid votes are mentioned as 65443 instead of 65453. On account of this mistake, the total votes polled at this segment are mentioned as 67158 in Ex. P-542. As the declaration of result of election is based on the entries as found in original Form No. 20 (Ex. P-541), nothing much turns on the entries made in certified typed copy of Ex. P-542.

BASAVANA BAGEWADI SEGMENT

Sri G. L. Chandrasekharah, Assistant Returning Officer, In-charge of No. 219 Basavana Bagewadi Segment, has been examined as P. W. 18.

He has spoken to the presence of the observer at the time of announcement of results with the Returning Officer. His evidence is that arrangement for counting of ballot papers of this segment at room No. 10 of Commerce College was done in accordance with the modelities as provided in Hand Book, counting started at 8 a.m. and counting agents assigned tabled numbers, there were three trays on each of the counting table; each divided into three compartments with Card-Board. Mainly the contest was between the Janatha Candidate and Congress candidate. Compartments earmarked for petitioner and first respondent were in different trays. He has deposed that ballot papers bearing thumb impression or smudged impression and ballot papers where major portion of 'x' mark was within the column of a candidate—be it petitioner or first respondent or any other candidate—were treated as valid. Tendered ballot papers were not counted. Letter 'D' found in most of these documents stood for 'doubtful' ballot papers and he

has taken a decision in respect of doubtful ballot papers either treating them as valid or invalid. Wherever ballot paper has been rejected as invalid, he has assigned reasons for rejection.

Sri Meera Sab, counting agent of petitioner at table No. 7 has been examined as P.W. 17. According to him, there were only two trays on a counting table. Each tray divided into two compartments—one earmarked for Congress and the other for Janatha. The second tray was divided into compartments for rest of the candidates and for placing doubtful and invalid ballot papers. There were in all 8 or 9 rounds of counting. Each round of counting took about an hour or an hour and a half. Counting supervisors did not inform particulars of polling booth number or the particulars of ballot paper account contained in Part-I of Form No. 16. His testimony is that as compartments of petitioner and first respondent were adjoining valid ballot papers of petitioner used to get mixed up with that of the first respondent.

Ballot papers with thumb impressions or smudged impressions and ballot papers where major portion of 'x' mark was within the column of the petitioner, were treated as doubtful; whereas, similar ballot papers of the first respondent were counted as valid. There were 10-12 ballot papers of such type in each round of counting. Often ballot papers account would not tally with the ballot papers used. It was not possible for him to note down the serial number of the ballot papers put in the compartment meant for placing doubtful ballot papers and in fact, he was not allowed to note down the serial numbers. He informed all these irregularities to Sri Katti when he had come to the counting hall in the After Noon. However, he admitted that he did not inform Sri Katti the denial of opportunity to note down the serial numbers of the ballot papers. He claimed experience having worked as a counting agent in previous elections.

Relevant portion of the evidence of P.W. 18 reads thus:—

"In Ex. P-649(b) total number of ballot papers used at the polling station mentioned as 358 is not correct. After deducting 201, unused ballot papers out of total 560 ballot papers received at the polling station, ballot papers used at the polling station, would be $560-201=359$ and not 308 as mentioned therein. 1 ballot paper is treated as cancelled. Therefore, the total ballot papers to be found in the box are rightly mentioned at item No. 5 of Part-I of this exhibit is 358. In Part-II of the same exhibit total ballot papers counted are rightly mentioned as 358. In Part-II of this exhibit, doubtful ballot papers are mentioned as 11. On scrutiny, one held to be valid in favour of first respondent and remaining 10 have been held to be invalid. Thus, there is no discrepancy.

All 12 doubtful ballot papers mentioned in Part-II of Ex. P-649(e) were rejected as invalid and have not remained as doubtful.

Out of 27 doubtful ballot papers mentioned in Part-II of Ex. P-649(f), 3 were declared as valid in favour of the first respondent and remaining 24 were rejected as invalid and have not remained as doubtful ballot papers.

Figure 13 written in the column meant for mentioning of rejected ballot papers in Part-II of Ex. P-649(g) have been altered to 12 i.e., because out of 13, 1 treated as valid in favour of Sri Koralli Gangadharan Siddaramappa. Thus, figure 13 have been altered to 12 and he has initialled this part of this exhibit after being satisfied about the correctness of those entries.

In Part-II of Ex. P-649(h), it is noted that there were 6 excess votes. On seeing Ex. P-649(h), he stated that 820 ballot papers were received at the polling station as per serial numbers of the ballot papers mentioned therein. On deduction of 407 unused ballot papers out of 820, ballot papers to be found in the ballot box would be 413; 1 ballot paper has been cancelled, so, the ballot papers that should have been found in the ballot box of this polling

station would be 412, same number of ballot papers are counted as entered in Part-II. The entry in Part-II that there are excess of 6 votes without verifying, what should have been the contents of the ballot box as the polling station is as error. Thus, there is neither excess nor shortage.

The names of all the contesting candidates are not entered in Part-II of Ex. P-649(1) probably due to the fact that other candidates might not have secured any votes.

Counting Supervisor in Part-II of Ex. P-649(n) after striking 'rejected ballot paper' has written as 'doubtful'. It is not correct. It should have been mentioned as 'rejected' as all of them have been rejected as invalid.

In respect of doubtful ballot papers mentioned in Part-II of Ex. P-649(o), he took decision to treat 1 as valid in favour of petitioner and to reject remaining 9 as invalid. Figure 10—1=9 is written by my Assistant.

All 16 ballot papers mentioned in Part-II of Ex. P-649(p) as doubtful were rejected as invalid.

All 22 doubtful ballot papers mentioned in Part-II of Ex. P-649(q) were rejected as invalid.

All 6 doubtful ballot papers mentioned in Part-II of Ex. P-649(r) were rejected as invalid.

On totalling, votes secured by all contesting candidates mentioned in Part-II of Ex. P-649(s), figure '278' as entered as against the name of first respondent is correct. Doubtful ballot papers mentioned therein were rejected as invalid.

In Part-II of Ex. P-649(y) doubtful ballot papers were mentioned as 7. On acceptance of 2 as valid in favour of petitioner remaining 5 were rejected as invalid.

Doubtful ballot papers mentioned as '4' in Ex. P-649(aa) on consideration were rejected as invalid.

Out of 27 doubtful ballot papers mentioned in Part-II of Ex. P-649(ak), 1 ballot paper was treated as valid in favour of petitioner and remaining 26 were treated as invalid.

In Ex. P-649(aq) in column meant for denoting the rejected ballot papers, though figure is mentioned as '21', on scrutiny, 1 was accepted as valid in favour of petitioner and remaining 20 were rejected as invalid.

Out of 27 doubtful ballot papers, mentioned in Part-II of Ex. P-649(ay), 1 ballot paper was treated as valid in favour of Sri Nagur and remaining 26 were treated as invalid.

As per entry in Ex. 649 (be), total ballot papers received at the polling station are 670. After deducting 319, unused ballot papers total ballot papers used at the polling station should have been mentioned and 351 instead of 350. Thus, there is neither excess nor shortage.

As per particulars of serial numbers of ballot papers mentioned in Part-I of Ex. P-649(bf), total ballot papers used at the polling station would be 567 and not 577. Hence, entry at item No. 5—ballot papers to be found in the ballot box—was not correct. But, based on this incorrect entry, a note has been made in Part-II to the effect that there were shortage of 10 votes."

In Ex. P-649(aj), ballot paper account of polling station No. 47, serial numbers of the ballot papers received run from 189391 to 190060 making a total of 670. Ballot papers unused with signature of Presiding Officer are mentioned as 11. Neither the serial number of the ballot papers unused with the signature of Presiding Officer nor serial numbers of the ballot papers used are set out at item Nos. 2(b) and (3) of Part-I of this exhibit. Hence, it is not possible to find out whether there is any error in mentioning the total ballot papers used as 399. But, as per Part-II of this exhibit ballot papers counted are noted as 397. Thus, there will be shortage of 2 votes.

In Ex. P-649(ak) ballot paper account of polling station No. 51, ballot papers received at the polling station are mentioned as 620. Unused are mentioned as 212. Used ballot papers are mentioned as 348. Serial numbers of the ballot papers used at this polling station are not mentioned. Hence, it is not possible to find out any error in the total that ballot papers used are 348.

In Ex. P-649(ao) ballot paper account of polling station No. 50, total ballot papers received are mentioned as 950, unused are mentioned as 352. After deducting 352 unused ballot papers out of total 950, used ballot papers are mentioned as 598 at item No. 3 of Part-I of this exhibit. One ballot paper is treated as tendered. So, ballot papers to be found in the ballot box, as entered at item No. 5 of Part-I of this exhibit would be 597 and same number is counted as per later part of this exhibit. In the absence of serial numbers of the ballot papers used at the polling station, it is not possible to make out whether there is any error in mentioning the used ballot papers as 598.

There is a shortage of one ballot paper each at polling stations Nos. 37, 39, 52, 54, 63, 97, 112 and 2 at polling station No. 95. On an analysis of ballot paper account of various polling stations of this segment it is noticed that there are 11 shortages.

Original Form No. 20 of this segment is marked as Ex. P-650 and the typed certified copy produced by the petitioner is marked as Ex. P-651. In Ex. P-650, total valid votes polled at polling station No. 122 are mentioned as 531, whereas in Ex. P-651, it is mentioned as 431. It is, thus, contended that there will be a shortage of 100 votes as mentioned in Ex. P-651. But on horizontal totalling of votes secured by all the candidates in Ex. P-651 itself, it would come to 531. Thus, the figure 431 appears to be a typographical error for 531.

In Ex. P-650 total votes polled at polling station No. 125 are mentioned as 672, whereas in Ex. P-651 it is mentioned as 671. In this view, it is contended that there is a shortage of 1 on the whole. On horizontal totalling of figures in Ex. P-651, total would come to 672 and not 671. Thus, there is an arithmetical mistake.

Non-mentioning of tendered ballot papers in Form No. 20 will not vary the result of election as they are not counted as per Rule 42 of the Rules, but kept separately.

MUDDEBIHAL SEGMENT

Sri V. B. Patil, Returning Officer, incharge of No. 217 Muddebihal Assembly Segment has been examined as P.W. 3. He has stated that counting took place on one of the rooms in ground floor of the Commerce College. He was assisted by Tahsildar, Sheristedar and another officer in scrutiny of ballot papers. Counting started roughly at about 8.05 a.m. on 28th of December, 1985.

There were five trays divided into ten compartments. Compartments varied depending upon the size of the trays. On distribution of ballot boxes, Counting Supervisors at the respective tables used to open the seal in the presence of counting agents on satisfaction that the seals were intact. After unfolding ballot papers contained in the box, started sorting of ballot papers to the compartments earmarked for respective candidates on the basis of votes as entered in the ballot papers. The ballot papers so sorted were numerically counted and bundled into 50 each. Counting Supervisors used to make entry on a check slip mentioning the name of candidates, votes secured by them in addition to making entries in Part-II of Form No. 16. Counting Supervisors were not taking decision as to whether a particular ballot paper was valid or invalid. All doubtful ballot papers in a bundle with Form No. 16 were brought to his table and kept in a pigeon hole earmarked. He scrutinised all the doubtful ballot papers and took decision regarding their validity or otherwise and made consequential 'plus' or 'minus' in that part of the form and also signed the same. After verifying the tabulation made by his assistants, he has signed Form No. 20 also.

Sri Gaddappa Basappa Hagaragond, who was the counting agent of petitioner at table No. 1 has been examined as P.W. 16. According to him, there were 5 trays on each table. Each tray divided into two compartments with cardboard. One compartment was meant for placing of doubtful as well as invalid ballot papers and remaining 9 com-

partments were used for candidates. As compartments of petitioner and first respondent were adjoining, ballot papers of petitioner used to get mixed up with that of first respondent; ballot papers with thumb impressions or smudged impressions caused inadvertently by an elector and of the ballot papers in which major portion of the 'x' mark was within the column of the petitioner, were treated as doubtful ballot papers, etc., as deposed by other witness. He informed these irregularities to Sri Katti and Returning Officer when they had come to the counting hall. At about 4 p.m. there was a commotion outside the counting hall stating that the petitioner was got elected and so saying few persons entered counting hall unauthorisedly and started disturbance. Due to this disturbance, it was not possible to verify whether scrutiny has been done properly or not. He claimed previous experience as having worked as counting agent in previous elections.

As per ballot paper account, Part-I of polling station No. 4, serial number of the ballot papers received run from 001521 to 002070 making the total of 550. Serial numbers of the ballot papers used run from 001521 to 001957 making the total of used ballot papers 437. Serial numbers of unused ballot papers as mentioned as against item No. 2(b) (without the signature of Presiding Officer) run from 001521 to 002070 making the total of 550. Serial numbers ballot papers would come to $93+1=94$ and not 113 as mentioned therein, thereby the used ballot papers would be more. This submission is not correct for the simple reason that the serial number of the last ballot paper used was 001957 hence serial number of the unused ballot paper starting from 001958 must run up to 002070, as that was the serial number of the ballot papers received at the polling station. Unfortunately, serial number of the last ballot papers unused, instead of running up to 002070 has stopped at 002051. 19 ballot papers running from 002052 to 002070, if added to unused ballot paper it would come to 113. If these 113 unused ballot papers are deducted out of 550 total ballot papers received at the polling station, it would come to 437. As per Part-II of this form, ballot papers counted are 437 and there is no discrepancy.

It is necessary to mention that ballot paper account—Form No. 16—of most of the polling stations have not been marked as exhibits. So also the ballot papers account of polling station No. 41 has not been marked as an exhibit. Even then, I don't find any error because 650 ballot papers contained in the ballot box have been counted as per Part-II of Form No. 16 of polling station No. 41.

Original Form No. 20 of this segment is marked as Ex. P-446. Certified copy produced by the petitioner is marked as Ex. P-447.

In Ex. P-447(a), at polling station No. 3 votes secured by first respondent are entered as 183, but in Ex. P-446(a) it is shown as 184. When verified with Part-II of Form No. 16 of polling station No. 3 Muddebihal segment, it was noticed that petitioner has secured 184 and the entry in Ex. P-446(a) is correct and the entry in certified copy i. e., Ex. P-447 (a) is a mistake.

In Ex. P-446(b) total votes polled at polling station No. 6 are mentioned as 452 (438 valid and 14 rejected). First respondent has secured 369, petitioner has secured 56, Kulkarni Ramanna Kalyana 1, Korally Gangadhar Sidramappa 3, Nagur Dr. Sardar B. K. 4, Peer Mahiboo Abdul Rahman 4, and Hosmani Chandrasekhar Kasappa 1—as per Part-II of this polling station. The total valid votes are correctly mentioned as 438. But in Ex. P-447(b), the certified copy of Form No. 20 in respect of polling station No. 6, Hosamani C. K. is shown to have secured 2. On verification of entry made in Part-II of Form No. 16, it is noticed that Hosmani C. K. has secured only 1. Even then, the total valid votes must come to 438. In Ex. P-446(b) rejected votes are mentioned as 14; whereas in Ex. P-447(b) it is mentioned as 16. On verification of entry in Part-II of Form No. 16, rejected ballot papers are correctly mentioned as 14 and not 16. There is typographical error in Ex. P-447(b).

In Ex. P-446(c) and Ex. P-447(c) both valid and rejected votes are correctly mentioned as 435 and 5 respectively, but granted total in Ex. P-447(c) (certified copy of Form No. 20) it is mentioned as 449 instead of 440. The figure 449 is an obvious error for 440.

In Ex. P-446(d) total ballot papers used are mentioned as 544 (530 valid and 14 rejected); votes secured by the first respondent and the petitioner are mentioned as 116 and 411 respectively. In Ex. P-447 (d) the certified copy of Form No. 20 votes secured by first respondent are mentioned as 166. On verification of entry in Part-II of Form No. 16 in respect of polling station No. 22, it is noticed that first respondent has secured 116 and not 166 as indicated in the typed certified copy Ex. P-447(d).

In Ex. P-446(e) total votes polled are indicated as 513 (valid 490+rejected 23); petitioner has secured 340 and first respondent has secured 140. But, in Ex. P-447(e), typed certified copy of Form No. 20, petitioner is shown to have secured 304 and first respondent is shown to have secured 140. On verification of Part-II of Form No. 16 in respect of polling station No. 31, it was noticed that petitioner has secured 340 and not 304. But the total valid ballot papers and the grand total of the votes polled at this polling station remain the same.

In Ex. P-446(f) total ballot papers used are mentioned as 540 (523 valid+17 rejected). But in Ex. P-447(f) after mentioning the total valid ballot papers as 523 and rejected as 17, total is mentioned as 504 instead of 540.

The mistakes committed either by person copying it or typing it has given scope for this petition though there are no such mistakes in original Form No. 20. On an analysis of ballot paper account of various polling stations of this segment, it is noticed that there are shortages of 8 votes one each at polling stations Nos. 57, 58, 60, 38, 68, 73 and 2 votes at polling station No. 52; and 2 excess at polling station No. 81.

HOOVINA HIPPARAGI SEGMENT

Sri Panchakshari Sharanayya Vastrad, Assistant Returning Officer of 218 Hoovina Hipparagi Segment has been examined as P.W.4. He has stated that counting took place in Room No. 2 of Commerce College.

He has spoken to the appointment of counting staff and counting agents by candidates.

After speaking to the preliminaries, such as fetching of ballot boxes from strong room and of opening of those boxes in the presence of counting agents, being satisfied that both outer and inner paper seals were intact, has testified the manner of counting. Counting Supervisor and Assistants sorted ballot papers found in the ballot box candidate-wise, according to the compartments earmarked for them. Doubtful ballot papers were placed in a separate tray. Second ballot papers put into compartments were numerically counted and bundled into 50 each. Counting Supervisors used to bring valid ballot papers bundled candidate-wise with a slip on it noting the names of the candidates and the number of votes secured by each candidate and also doubtful ballot papers with Form No. 16 to his table. On scrutiny of those doubtful ballot papers, he has taken a decision regarding their validity or otherwise and made consequential variations of plus and minus in Part-II of Form No. 16.

No person other than the counting staff, election agents, counting agents and candidates had access to counting hall. Necessary security arrangements had been made and police were standing at the door of the counting hall.

Sri Basavaraj Alvi, a counting agent of petitioner has been examined as P. W. 15. According to him, there were nine rounds of counting. He has stated that the valid ballot boxes of the petitioner used to often mixed up the valid ballot papers of the first respondent as compartments were adjoining each other ballot no papers bearing thumb impressions, ballot papers bearing no signature of Presiding Officer, ballot papers containing more than one 'X'—one stamped with the instrument and other impression of that mark caused due to folding by voter, were often treated as doubtful and put in a tray meant for placing of doubtful ballot papers. He has not noted serial number of the ballot papers which were so mixed up with that of the first respondent nor serial number of the ballot papers which were treated as doubtful though valid.

Before dealing with the discrepancies in entries in Form No. 16, let me deal with the evidence regarding inconsistent entries made in Ex. P-532(a) and Ex. P-533. Ex. P-532(a) is Form No. 20 polling station-wise maintained by the

Assistant Returning Officer; Ex. P-533 is the certified copy of that form.

As per entries in both these exhibits, votes polled at secured 225 at polling station No. 13; whereas, as per entry in Ex. P-533 he has secured 325. Contention of petitioner was that thereby 100 votes have not been accounted to his credit. On verification of the entries as made in Part-II of Form No. 16 of this polling station, it was noticed that petitioner has secured only 225 and not 325.

As per entries in both these exhibits, votes polled at polling station No. 34 are shown as 486. But, it was elicited that horizontal totalling of votes secured by all candidates, at polling station No. 34 as per entry in Ex. P-533 may be 481. On verification of votes polled with reference to Ex. P-531(ag) (Part-II of Form No. 16) it was noticed that votes polled and counted were 486.

In Ex. P-533, total number of votes polled at polling station No. 35 were shown as 276, whereas in Ex. P-532(a), total number of votes polled are shown as 476. On verification of votes polled at this polling station, with reference to ballot paper account, Part-II of Form No. 16, it was noticed that the votes polled and counted were 476. First respondent has secured 287 and petitioner has secured 150. Entry in certified copy is a mistake.

Total number of votes polled at polling station No. 63 both in Ex. P-532(a) and Ex. P-533 were 566. It was elicited that an horizontal totalling of votes secured by all the candidates in Ex. P-533 may be 561. Entry in Part-II of Ex. P-531(u) disclosed that 566 were polled and counted.

Total number of votes polled at polling station No. 88 as per Ex. P-533 were 314. Ex. P-532(a) total number of votes polled were 334. In Ex. P-533, certified copy of Form No. 20, itself, total valid ballot papers polled were noted as 331 and rejected as 3. Instead of mentioning the total as 334, it has been typed as 314 in the certified copy. This is a typographical error.

Total number of votes polled at polling station No. 90 were shown as 425 both in Ex. P-532 (a) and Ex. P-533. It was elicited that horizontal totalling of votes secured by all the candidates in Ex. P-533 may be 426. On verification of entries in Part-II of Form No. 16 of this polling station, it was noticed that votes polled and counted were 425.

Total number of votes polled at polling station No. 98 were shown as 210 in both these documents; answer elicited was that horizontal totalling of votes secured by all the candidates in Ex. P-533 may be 230. On verification with reference to Ex. P-531(ab) (Part-II of Form No. 16) it was noticed that votes polled and counted were 210.

Total number of votes polled at polling station No. 119 in both the documents i.e. Ex. P-532(a) and Ex. P-533 were mentioned as 297. In column No. 11 total number of valid ballot papers are mentioned as 290 and rejected votes are mentioned as 7 in the next column; total would come to 297; instead of 297 it has been typed as 207 and is only a typographical error.

Assuming for the sake of arguments, that there were so many mistakes or errors in certified copy i.e., Ex. P-533 those mistakes will not vitiate the result of election, so long as votes secured by all the candidates as entered in Part-II of Form No. 16 and as reflected in original Form No. 20 remain unchallenged.

Now let me test us to whether there are any excess counted in favour of first respondent or there any shortages?

In Ex. P-531(1) ballot paper account of polling station No. 31, serial numbers of ballot papers received run from 092991 to 093930; that means total ballot papers received would come to 940. Serial numbers of the unused ballot papers with signature or without signature of presiding officer run from 093648 to 093930 making a total of 283. Deducting 283 unused ballot papers out of 940 ballot papers received, ballot papers used would be 657 and not 647 as mentioned at item No. 3 of Part-I. Out of these, 3 are either cancelled or treated as tendered, so ballot papers to be found in the ballot box would be $657-3=654$ and not 644 as entered at item No. 5 of Part-I. Total ballot papers counted as entered in Part-II of Ex. P-531(1) are only 653 which would be short by one.

In Ex. P-531(o) ballot paper account of polling station No. 42, according to learned counsel, total ballot papers received at polling station were 610; unused were 218; used ballot papers were mentioned therein as 382. Counted ballot papers, as entered in Part-II of the same form were 390, thereby there were 8 votes in excess.

This is incorrect for the simple reason; the serial numbers of ballot papers with signature and without signature run from 101023 to 101240 making a total of 218. Out of 610 if unused ballot papers of 218 are deducted, total number of ballot papers used would be 392 and not 382 as mentioned therein. There is an arithmetical error in subtracting total number of unused ballot papers out of total ballot papers received at the polling station. Instead of there being an excess votes by 8, there will be a shortage of 2 votes ($392-390=2$).

In Ex. P-531(u), ballot paper account of polling station No. 63, according to learned counsel, there were 48 excess ballot papers.

This is also not correct for the simple reason that serial numbers of the ballot papers received at polling station run from 114911 to 115690 making the total of 780. Serial numbers of the unused ballot papers with signature and without signature as per entries made as again item Nos. (a) and (b) of item No. 2 run from 115476 to 115690. So, serial number of ballot papers used run from Sl. Nos. 114911 to 115475 the total of which would come to 565. So, the entry at item No. 3 mentioning ballot papers used at this polling station as 615 is an error. Out of 565, one ballot paper is canceled. So, the net ballot papers to be found in the ballot box would be 564. The ballot papers counted as per Part-II of Form No. 16 are 566 and thereby 2 votes are in excess.

Ballot paper account of polling station No. 85 is not marked as an exhibit. Out of 890 ballot papers received, 210 are unused. So, ballot papers used would be 680; 4 are cancelled. Ballot papers to be found in the ballot box would be $680-4=676$ and same number counted as per entry in Part-II of ballot paper account of this polling station.

In Ex. P-531(ad) ballot paper account of polling station No. 95, as per petitioner's contention there were shortages of 35 ballot papers. Total ballot papers received at the polling station were 780; unused with or without signature were 240; deducting 240 unused ballot papers out of 780, total ballot papers to be found in the ballot box would be 540 and this figure is correctly mentioned at item No. 3. Unfortunately, polling officer instead of repeating same figure at item No. 5, has written it as 575. That is an obvious error for 540. Hence, there is neither excess nor shortage in this polling station.

In Ex. P-532(a) votes polled at polling station No. 98 were mentioned as 210 (307 valid and 3 invalid). Petitioner has secured 146 and first respondent has secured 50 as noted in Ex. P-532(a). But, on verification with entries made in Ex. P-531(ab), Form No. 16 of this polling station, it was noticed that first respondent has secured 50 and not 30 as noted in Ex. P-533. The figure 30, as noted in Ex. P-533, is a typographical error for 50. Hence, there is neither excess nor shortage in this polling station.

In Ex. P-531(af) ballot paper account of polling station No. 115, ballot papers to be found in the ballot box excluding unused ballot papers with reference to serial numbers are rightly mentioned as 696. In Part-II of the same form, ballot papers counted are mentioned as 696. This figure 696 is rounded off and in red ink it is written as 706. If the rejected ballot papers are 19, instead of 9, then there will be an excess of 10 ballot papers. On the other hand, if the rejected ballot papers are only 9, there will be a shortage of one. Unfortunately, parties have not concentrated on this aspect viz., whether rejected ballot papers were 9 or 19.

Thus, on an analysis of ballot paper account of various polling stations of this segment, it is noticed that there are shortages of 24 votes viz., 3 votes each at polling stations Nos. 7 and 60; 4 votes at polling station No. 70; 2 votes each at polling stations Nos. 42 and 87 and 1 vote each at polling stations Nos. 21, 30, 31, 36, 45, 49, 52, 64, 94 and 109; and excess of 2 and 1 vote at polling stations Nos. 63 and 2 respectively.

INDI SEGMENT

Sri S. B. Thirlapur, Assistant Returning Officer, No. 223 Indi Assembly Segment has been examined as P. W. 8. According to him, counting took place at room No. 14 of Commerce College, Bijapur, which measured 30'X50'; there were 15 counting tables apart from his. In all there were nine rounds of counting. There were nine trays on each table; as there were no separate column in Part-II of Form No. 16 to mention doubtful ballot papers, counting supervisors used to make entries of, both, doubtful ballot papers and apparently invalid doubtful ballot papers, at times in column meant for mentioning the rejected ballot papers and at times immediately below the names of the contesting candidates. He, on scrutiny of doubtful ballot papers, as well as, the apparently invalid ballot papers, that were brought to his table by counting supervisors, decided which of them should be treated as valid or invalid and made consequential plus and minus in Part-II of form No. 16. Wherever, he has rejected ballot papers as invalid, he has assigned reasons. On verification as to whether instructions given to counting supervisors have been carried out or not, signed Part-II of Form No. 16. On being satisfied with the entries made by the Tabulators, signed Form No. 20.

Neither the candidates nor counting agents raised any objection regarding procedure adopted for counting. He has stated that before rejecting the ballot papers as invalid, opportunity was provided to counting agents to note down the serial numbers of the ballot papers and also reasons assigned for rejection.

Sri Sharanappa Shivappa Naragodi, counting agent of petitioner has been examined as P.W. 14. He was not sitting at Assistant Returning Officer's table, to vouch safe the correctness or otherwise of the order of Assistant Returning Officer regarding rejection of some of the ballot papers as invalid. He has spoken to the commotion outside the counting hall at about 4 p.m. when they heard that petitioner was leading. Thereafter due to unauthorised entry of persons and disturbance caused, it was not possible for him to verify whether scrutiny was made properly or not. Police drove out unauthorised persons. While so doing, some of the counting agents of the petitioner were also driven out. Sri Katti, election agent of petitioner and Returning Officer had come to the counting hall and had informed them orally of the irregularities in counting.

I will first deal with the discrepancies in Ex. P-550, the original Form No. 20 and Ex. P-551, the certified copy of Form No. 20.

In Ex P-550, petitioner is shown to have secured 140 at polling station No. 51; whereas in Ex. P-551, petitioner is shown to have secured 149. On verification of entries in Part-II of Form No. 16 of polling station No. 51 [Ex. P-549-(g)], it was noticed that petitioner has secured only 140 and not 149.

In Ex. P-550 petitioner is shown to have secured 100 at polling station No. 53; whereas in Ex. P-551, petitioner is shown to have secured 199. On verification of entries in Part-II of Form No. 16, Ex. P-549(h), of this polling station, it was noticed that petitioner has secured only 100 and not 199.

There is no discrepancy in entries in Ex. P-550 and Ex. P-551 regarding votes secured by petitioner and first respondent at polling stations Nos. 16 and 66.

Witness after totalling votes polled at each polling station stated that petitioner has secured 23926 as correctly mentioned in Ex. P-550.

Entries in Ex. P-550 reflect the entries in Part-II of Form No. 16. As declaration is made on the basis of entries in original Form No. 20 (Ex. P-550), it is unnecessary further to examine as to how and where mistakes have crept in, in the certified copy.

Only 8 ballot paper account Form No. 16 of this segment remarked as Ex. P-549(a) to Ex. P-549(h). In none of these exhibit is there any variation between figures found in Part-I and Part-II of these documents. Hence, learned counsel rightly did not avert to these exhibits.

However, my attention was drawn to discrepancies between entries in Part-I and Part-II of Form No. 16 of polling stations Nos. 4, 23, 41, 58, 77, 83, 112, 127 and 135. As these forms have not been marked as exhibits, it is unnecessary to refer to them in detail except stating that the ballot papers contained in these boxes as noted in Part-I of Form No. 16, of these polling stations, have been counted, as entered in Part-II of the same form except one shortage at polling station No. 135

TIKOTA ASSEMBLY SEGMENT

Sri T. A. Machuknur, Assistant Returning Officer, No. 220, Tikota Assembly Segment, has been examined as P.W. 5. Counting of ballot papers of this segment took place in Room No. 11 of Commerce College. He has spoken to the presence of an observer. He has stated that counting assistants after unfolding ballot papers found in the ballot box, used to give them to counting supervisors, who in turn used to distribute to respective compartments in the tray earmarked for candidates. After distribution, ballot papers in each compartments were numerically counted and bundled into 50 each. Necessary entries were made by counting supervisors in Part-II of Form No. 16 mentioning the votes secured by each candidates and number of doubtful ballot papers. He scrutinised doubtful ballot papers in the presence of counting agents. On verifying the entries made by Tabulators, he has signed Form No. 20.

Sri Chandrasekhar Devappa Mirji, who was a counting agent for petitioner at table No. 3 has been examined as P.W.12. He has admitted that there were no counting agents of petitioner as Assistant Returning Officer's table. Hence, his evidence at best pertained to what transpired at his counting table.

Assuming that ballot papers bearing thumb impression, at places other than the place meant for making 'X' snudged ballot papers and ballot papers of petitioner where major portion of 'X' mark was within his compartment were treated as doubtful as all those doubtful ballot papers have been scrutinised by P.W. 5 before treating them as either invalid or valid; hence, no credence can be given to the version of P.W.12.

Form No. 20 is marked as Ex. P-538; certified copy of Form No. 20 is marked as Ex. P-539.

In Ex. P-538, first respondent is shown to have secured 208 votes at polling station No. 21; whereas in Ex. P-539, first respondent is shown to have secured 108, thereby 100 votes are counted in excess to first respondent verification with entries made in Part-II of Form No. 16 of this polling station, it was noticed that first respondent has secured 208 votes and not 108 as entered in the certified copy. Total votes polled in this segment are mentioned as 49,631. Answer elicited was that figures as mentioned in the certified copy, if totalled would come to 49,531 showing shortage of 100 votes. Except eliciting that there may be shortage of 100 votes in the total votes secured by first respondent and in grant total, no attempt has been made either in the evidence of Sri Katti, Election Agent or petitioner to establish shortage, if any, with reference to entries in Part-II of Form No. 16 and in Original Form No. 20. As already indicated, the error in certified copy will not vitiate the result of election or would it constitute a ground to order re-count.

Ballot paper account (Form No. 16) of polling station No. 13 though not marked as an exhibit, forced to deal with it, as much was made, about the discrepancies in this form. Serial numbers of the ballot papers received at the polling station run from 254711 to 255220, thereby total ballot papers received at polling station would be 510. Serial numbers of the unused ballot papers without the signature of the Presiding Officers run from 254901 to 255220 and at item 2(a + b) unused ballot papers are mentioned as 220 instead of 319. Serial unused ballot papers with signature and serial numbers of the unused ballot papers with signature and serial ballot papers unused without the signature will not be 220 as mentioned therein, but 319. Fortunately, petitioner has secured 226 votes in this polling station, whereas first respondent has secured hardly 16. It is having regard to these figures, petitioner did not set this document marked as an exhibit. Assuming for the sake of argument that Part-I of Form No. 16 of this polling station has not given the correct numbers of ballot papers used and unused. I am unable to understand how it would tilt the result of declaration.

Ballot paper account of polling station No. 27 has not been marked as exhibit and total ballot papers contained in the ballot box, as entered at item No. 5 are counted as could be seen from the later part of that form.

Similarly ballot paper account of polling station No. 28 is also not marked as exhibit. Total number of ballot papers received at the polling station are mentioned as 810 starting from serial numbers 264831 to 265640. Serial numbers of the unused ballot papers without the signature of presiding officer are mentioned as 265101 to 265640. Serial Number 265101 mentioned at item No. 2(b) is an obvious error as it has been already included in the category mentioned at item No.2(a) i.e., ballot papers unused with signature of presiding officer. Under these circumstances, it is not possible to hold that note at item No. 5 viz., ballot box contains 496 is wrong. Same number of ballot papers are counted as per entry in the later part of that form. Hence, there is no discrepancy. The petitioner who had the knowledge of these discrepancies as and when these forms were furnished to his polling agents as per Rule 45 of the Rules has not made any attempt to get the correct figures nor has he made any grievance at the time when the later parts of the same form were filled up by the counting supervisors/Assistant Returning Officers. As already indicated, the petitioner has not based the relief of re-count on specific grounds or instances, but has ventured to have a roving enquiry.

In Ex. P-537(b) ballot paper account of polling station No. 4 out of 510 ballot papers used, one is cancelled. So, ballot papers to be found should have been 509, instead of 510. Counted are 510. There is an excess of one vote.

In Ex. P-537(l) ballot paper account of polling station No. 16, serial numbers of the ballot papers received at the polling station run from 256301 to 257250 making the total of 950. Serial numbers of the ballot papers used run from 256301 to 256978 making the total of 678 and it is correctly mentioned at item No. 3. Serial numbers of the unused ballot papers run from 256979 to 257250 with or without the signature, making the total of 272. Out of 950, unused ballot papers of 272 are deducted, total ballot papers used would be 678; 3 are spoiled. So, the net ballot papers to be found in the ballot box would be 675 and same number of ballot papers are counted in Part-II of this exhibit. Hence, there is neither excess nor shortage.

In Ex. P-537(l) ballot paper account of polling station No. 33, ballot papers received are mentioned as 270. Serial numbers of unused ballot papers with and without signatures and used ballot papers are not mentioned. The column meant for indicating discrepancy, if any, is left blank. So, it may conveniently be taken that the ballot papers contained in the ballot box are all counted.

On an analysis of ballot paper account of this segment, it is noticed that there are 36 shortages viz., 12 votes at polling station No. 87; 2 votes each at polling stations Nos. 6, 40, 42, 82, 86 and one vote each at polling stations Nos. 20, 21, 26, 33, 36, 52, 60, 67, 70, 72, 75, 94, 102 and 115, and one excess at polling station No. 4.

SINDHGI ASSEMBLY SEGMENT

Jagdish, Assistant Returning Officer of No. 224, Sindhgi Assembly Segment has been examined as P.W. 9. He was assisted by Sri Karisiddi Math, Tahsildar of Sindhgi Taluk and M. B. Madagudi, Revenue Inspector in scrutiny of ballot papers. Counting of ballot papers of this segment took place in Room No. 19 of Commerce College. Counting commenced at 8 a.m. There were 15 counting tables and he has assigned table numbers to the counting agents. Counting supervisors after verifying both outer and inner seals of ballot box were intact, in the presence of the counting agents, used to open ballot box. After unfolding the ballot papers contained in the ballot box, started sorting ballot papers candidate-wise to respective compartments according to the votes re-

corded on the ballot paper. As counting supervisors could not decide the validity or otherwise of the ballot papers both doubtful ballot papers and apparently invalid ballot papers were put in a tray meant for placing of doubtful ballot papers. On sorting, ballot papers in each compartment were numerically counted and bundled into 50 each. Counting supervisors after making an entry in the check slip and filling up Part-II of Form No. 16 used to send it on to his table. There were in all ten rounds of counting. After removing the bundle containing doubtful ballot papers and Form No. 16 from pigeon hole used to scrutinise them. 'Scrutinise' meant to verify the validity or invalidity of doubtful ballot papers. In case of acceptance, consequential 'plus' and 'minus' have been done and wherever a vote was rejected as invalid reasons were assigned for rejection.

In cross-examination, he admitted that ultimate decision regarding doubtful ballot papers was his. Counting agents were provided with an opportunity to see ballot papers before rejecting them as invalid. There was no complaint regarding denial of opportunity to counting agents. There was a decision in respect of all doubtful ballot papers either rejecting them as invalid or treating them as valid. It is only after satisfying about the invalidity and on assigning reasons, rejected them as invalid and tick of one of the grounds mentioned in the seal meant for the purpose.

Ex. P-554 is the original of Form No. 20 and Ex. P-551 is the certified copy of Form No. 20.

P.W. 9 stated that there may be discrepancy in the entries made in Ex. P. 554 and Ex. P-555 re : votes secured by candidates at polling stations Nos. 21, 48, 70, 115 and 124. So also, there may be discrepancy in mentioning total number of rejected votes and counted as valid. Likewise, there may be discrepancy in mentioning total number of votes secured by petitioner and first respondent. Though it was elicited from this witness that there may be discrepancy in mentioning of the votes secured by candidates at polling station Nos. 21, 48, 70, 115 and 124 as entered in Ex. P-554 and Ex. P-555, it was found on verification that there were no discrepancy in mentioning of votes secured both by the petitioner and the first respondent at these polling stations. Figures as found in Part-II of Form No. 16 are correctly reflected in these documents vid. :

Exhibit No.	Polling Station No.	Votes secured by	
		Petitioner	First Respondent
554	555	21	166
554	555	48	412
554	555	70	24
554	555	115	45
554	555	124	155

It was not possible to state whether ballot paper bearing smudged marks were rejected or accepted, without looking into ballot papers; question of permitting counting agents to make a note of serial numbers of ballot papers or reasons assigned for rejection did not arise as no accounting agent of petitioner was present at his table. He stated that letter 'D' stood for doubtful in Part-II of Form No. 16 and all those doubtful ballot papers were scrutinised by him and a decision taken. Result of his scrutiny is set out as follows :--

Ex. No.	PS No.	No. of Doubtful BP	Valid	Rejected	If valid to whom it was marked for							
					Peti- tioner	First Respt.	Kora- lli	Dr. Nagur	Peera M.A.	Hosa- mani C.K.	Smt. Bom- mana- lli L.A.	Bira- dar R.B.
P-556(a)	2	16	3	13	2	..	..	1	..	..	..	..
P-556(g)	11	31	11	20	2	6	1	2	..	..	..	..
P-556(h)	14	8	2	6	1	..	..	1	..	..	..	..
P-556(j)	15	14	3	11	1	..	2	..	..	..	..	..
P-556(m)	27	20	6	14	1	1	..	2	..	..	1	1
P-556(o)	29	11	1	10	..	..	..	1	..	..	..	..
P-556(r)	33	11	4	7	1	..	2	1	..	..	..	..
P-556(u)	36	9	3	6	1	2	..	..	..	..	..	..
P-556(v)	41	24	5	19	1	2	1	..	..	1	..	..
P-556(ab)	49	12	3	9	3	..	..	..	..	..	..	..
P-556(ac)	56	19	2	17	2	..	..	..	..	..	..	..
P-556(af)	59	23	8	15	1	2	..	3	..	2	..	..
P-556(am)	71	9	2	7	..	2	..	..	..	..	..	..
P-556(ap)	74	22	2	20	2	..	..	..	..	..	..	..
P-556(ar)	78	8	5	3	5	..	..	..	..	..	..	..
P-556(aw)	89	6	3	3	2	..	..	1	..	..	..	..
P-556(c-z)	93	6	1	5	..	1	..	..	..	..	..	..
P-556(bc)	101	17	6	11	5	..	..	..	..	..	1	..
P-556(bd)	104	17	5	12	2	..	..	1	1	..	1	..
P-556(be)	106	24	8	16	2	2	3	1	..	..	..	..
P-556(bf)	108	15	3	12	3	..	..	..	..	..	..	..
P-556(bm)	116	19	4	15	..	3	1	..	..	..	..	..
P-556(bn)	117	19	2	8	..	1	..	1	..	..	..	..
P-556(bo)	119	5	2	3	2	..	..	..	..	..	..	..
P-556(bp)	123	12	3	9	..	1	1	1	..	..	..	..
P-556(bq)	124	20	4	16	..	1	1	1	..	1	..	..
P-556(bv)	131	7	1	6	..	..	..	1	..	..	..	..
P-556(bw)	133	25	9	16	4	3	..	2	..	..	..	..

Marked voters of list of polling stations Nos. 14, 15, 40, 42, 97, 105, 111, 112, 113, 114, 115, 116, 117, 120, 121, 122, 132, 133, 134, 135, 143 and 144 are marked as Exhibits P-558, P-562, P-568, P-572, P-576, P-580, P-584, P-588, P-592, P-596, P-600, P-604, P-608, P-612, P-616, P-620, P-624, P-628, P-632, P-636, P-640 and P-644 respectively.

In Ex. P-556(c), ballot paper account of polling station No. 4, serial numbers of the ballot papers used run from 622671 to 623122 making the total of 452 instead of 451 as entered at item Nos. 3 and 5 of Part-I. Ballot papers counted in Part-II of the same form are 451. There is a shortage of one vote.

The ballot paper account Form No. 16 of polling station No. 17 though not marked as an exhibit, I purpose to deal with this polling station to demonstrate that the arithmetical or clerical error has been made much of (a) Serial number of the ballot papers received at the polling station run from 631491 to 632260 making a total of 770; (b) ballot papers unused are mentioned as 315; and (c) ballot papers used are mentioned as 454 and counted are shown in Part-II of this form. Serial number of the ballot papers used at the polling station run from 631491 to 631944 which comes to 454. But, harping upon the figures as entered against item No. 2(b) as '631945 to 632260=316' it was contended that the ballot papers received far exceed: unused ballot papers itself would be 1016. This submission is prima facie erroneous as serial number of last ballot paper received at this polling station as entered at item No. 1 was 632260. Ballot papers bearing serial numbers from 632261 to 632550 and 632551 to 633050 have been received at next polling station Nos. 18 and 19 respectively. Ballot papers bearing serial number 632960 could not have been used to polling stations Nos. 17 as well as 19. Thus, it is clear that in the second column of item No. 2(b) the serial number of the last ballot paper i.e., 632260 should have been mentioned

instead of 632960. Figure 960 is an error for figure 260. This conclusion is fortified by the fact that total ballot papers unused at the polling station are 315 (632260—631945=316).

Same is the position in respect of ballot paper account of polling station No. 83. Serial numbers of the ballot papers received at the polling station run from 675641 to 676390 making a total of 750. Serial number of the ballot papers used, as mentioned at item No. 3, run from 675641 to 676067 making a total of 427. So, the serial numbers of the unused ballot paper must necessarily run from 676068 to 676390 and the figures mentioned at column 2(b) as 675068 is an error for 676068. When the serial number of the ballot papers received commenced from 675641, serial number of unused ballot paper could not have been 675068. Ballot paper bearing Sl. No. 675068 has been used in previous polling station No. 82.

Same is the position in respect of ballot paper account Form No. 16—of Polling Station No. 95.

Ballot paper account of polling stations Nos. 12, 18, 19, 83 and 95 are not marked as exhibits, hence, not adverted to.

In ballot paper account of polling station No. 27, serial number of the ballot papers used are not furnished. Serial number of the unused ballot papers with signature are mentioned as 638447 to 638449 making the total of 3. As against item No. 2 (b) the figure '638760' repeated at both places viz., 'from' and 'to'. Hence it is not possible to make out unused ballot papers with signature of presiding officer. Consequently, it is not possible to make out the total number of unused ballot papers. At item No. 3 ballot papers used at polling station are mentioned as 357; one is cancelled; consequently, 356 are mentioned as the ballot papers to be found in the ballot box in item No. 5 of Part-I. Same are counted in Part-II of Form No. 16 of this polling station. Hence, there is neither excess nor shortage.

In Ex. P-556(p) ballot paper account of polling station No. 30, serial number of the ballot paper received runs from 640341 to 641170 making a total of 830. Serial numbers of unused ballot papers with signature and without signature run from 640684 to 640700 and 640701 to 641170 a total of $17 + 470 = 487$. Deducting unused ballot papers of 487 out of 830, ballot papers used at the polling station would be 343. One is cancelled and the other is treated as tendered. So number of ballot papers to be found in the ballot box as mentioned therein would be 341. Same number of ballot papers are counted as per entry in Part-II of this polling station. There is neither excess nor shortage.

In Ex. P-556(q) ballot paper account of polling station No. 31, instead of entering serial numbers of the used ballot papers at item No. 3 as running from 641171 to 641607 it is entered at item No. 4. Total number of ballot papers used at polling station as per serial numbers would be 437 and that figure is mentioned at item No. 5. Same number of ballot papers are counted in Part-II of Form No. 16 of this polling station. There is neither excess nor shortage.

In Ex. P-556(aj) serial numbers of the ballot papers received at polling station run from 664521 to 665060 making a total of 540. Serial numbers of the unused ballot papers with signature and without signature of Presiding Officer run from 664776 to 665060 making a total of 285. On deducting 285 out of 540 total ballot papers received, ballot papers to be found in the ballot box would be 255. Same number of ballot papers are counted in Part-II of this exhibit. There is neither excess nor shortage.

In Ex. P-556(ak) ballot paper account of polling station No. 65, serial numbers of used ballot papers run from 665061 to 665360 making a total of 300 and not 310, as mentioned therein. Figure '310' is rounded off and figure '300' is written. Same number of ballot papers are counted in Part-II of this exhibit. There is neither excess nor shortage.

In Ex. P-556(cc) ballot paper account of polling station No. 72, serial numbers of the ballot papers received run from 669141 to 669690 making a total of 550. Serial numbers of unused ballot papers run from 669523 to 669690 making a total of 168 and not 208 as mentioned therein. Serial numbers of the ballot papers used run from 669141 to 669522 making a total of 382. The total of used ballot papers and unused ballot papers, would be 550 ($382 + 168 = 550$). Figure '208' is an error for '168'. All ballot papers used are counted.

In Ex. P-556(at) ballot paper account of polling station No. 81, serial number of ballot papers received run from 674251 to 675030 making a total of 780. Serial numbers of the unused ballot papers, with signature of presiding officer are mentioned as 674568 and 674569 making a total of 2. Serial numbers of the unused ballot papers without signature of presiding officer are mentioned as 676401 to 674951 and 674570 to 674570. When serial number of the last ballot paper received was 675030, serial number of unused ballot papers, without signature could not have commenced with 676401. On the other hand, these series i.e., ballot paper bearing serial numbers 676401 have been used at polling station No. 84 where serial number runs from 676391 to 676890. In the absence of correct serial numbers of 'used and unused' ballot papers, entry in Part-I of Form No. 16 that the ballot box must contain 347 votes cannot be said to be a mistake.

In Ex. P-556(cc) ballot paper account of polling station No. 144, serial numbers of ballot papers used run from 712341 to 712870 making a total of 530 and same number entered at item No. 5 of Part-I. In Part-II of this Exhibit, 530 are counted. There is neither excess nor shortage.

There is excess of one vote each at polling stations Nos. 35, 59 and 113—vide Ex. P-556(t), Ex. P-556(af) and Ex. P-556(bl) respectively.

There are shortages of 3 votes, 2 votes, 1 vote and 1 vote at polling stations Nos. 29, 33, 34 and 137 vide Ex. P-556(o), Ex. P-556(r), Ex. P-556(s) and Ex. P-556(bz) respectively.
2248 GI/88—4

With reference to entries in Ex. P-535 (certified copy of Form No. 20) of polling station No. 11, it was submitted that first respondent is shown to have secured 345 when in fact he has secured only 339. On verification of entries in Part-II of Form No. 16, it was noticed that first respondent has secured 339+6 which would come to 345. Hence, there is no error.

In Ex. P-555, certified copy of Form No. 20, first respondent is shown to have secured 99 at polling station No. 130. Whereas, he has secured only 39. On verification of entries in Part-II of Form No. 16 of Polling Station No. 130, it was noticed that first respondent has secured 99 and not 39 as indicated in certified copy.

On an analysis of ballot paper account of various polling stations of this segment, it is noticed that there are shortages of 7 viz., 3 votes at polling station No. 29; 2 votes at polling station No. 33 and 1 vote each at polling stations Nos. 34 and 137 and three excess, one vote each at polling station Nos. 35, 59 and 113.

BALLOLI ASSEMBLY SEGMENT

Sri Murugeshaiah, Assistant Returning Officer of No. 221, Balloli Assembly Segment, has been examined as P.W. 7.

Counting of ballot papers of this segment took place in Room No. 15 of Commerce College. After narrating the arrangements made at counting hall in accordance with the modalities prescribed and assigning the table numbers to the counting agents, stated that there were 7 trays on each counting table, one for petitioner, one for first respondent and other divided into compartments. Doubtful and invalid ballot papers were put in the last compartment. He has testified that counting supervisors at various tables verifying whether the seals put on ballot boxes were intact or not in the presence of counting agents, used to open them. After unfolding ballot papers contained in the ballot box, stated sorting ballot papers candidatewise to respective compartments according to votes recorded on the ballot paper. As counting supervisors were not competent to reject the ballot papers as invalid, they were putting both doubtful and apparently invalid ballot papers in the tray meant for placing of doubtful ballot papers. On completion of sorting of ballot papers, used to numerically count the ballot papers and bundled into 50 each. They used to put a slip on the valid papers of the respective candidates mentioning their names and the votes secured by them in addition to making entries in Part-II of Form No. 16. Bundle of ballot papers with Form No. 16 used to be sent on to his table and kept in a pigeon hole earmarked. On scrutiny of doubtful ballot papers that were brought to him, he has taken a decision as to whether a particular doubtful ballot paper should be treated as valid or invalid; where he has treated as valid, necessary additions have been made to candidates in whose favour doubtful ballot papers were declared to be valid; wherever ballot papers were rejected as invalid, he has assigned reasons for rejection and tick of the reason for rejection mentioned in the serial. He has stated that before rejecting ballot paper as invalid, sufficient opportunity was given to counting agents. Counting agents were permitted to make notes in the process of counting. He has stated that he conducted random check of valid ballot papers to verify the numerical numbers of the ballot papers and also the mixing of ballot papers of one candidate with the other. There were in all nine rounds of counting and Returning Officer had come to the counting hall twice or thrice. He has stated that he himself has taken a decision in respect of doubtful ballot papers mentioned in Part-II of Form No. 16 and no ballot paper remained as a doubtful ballot paper. The letter 'D' found in Part-II of Form No. 16 denoted 'Doubtful'. According to counting supervisors those were doubtful ballot papers and all those were scrutinised by him and a decision taken making 'plus' and 'minus' depending upon the result.

Sri B. R. Patil, counting agent of petitioner at table No. 1 of this counting hall has been examined as P.W. 11. There were seven trays according to him. One for petitioner, one for first respondent and remaining divided into compartments. Seals of ballot boxes were opened at the table, but not known whether they were intact or not. During sorting whether intentionally or otherwise, ballot papers of petitioner used to get mixed up with that of the first respondent.

Ballot papers bearing thumb impression or smudged impression and some of the ballot papers where major portion of mark was within the column of petitioner, were treated as doubtful. Both invalid and doubtful ballot papers were being placed in a compartment meant for placing of doubtful ballot papers. He admits that no counting agent of petitioner was present at Assistant Returning Officer's table. Returning Officer had come to the counting hall at first round of counting itself. Votes secured by candidates at the end of each round of counting was not announced. He has not noted serial number of the ballot papers which were got mixed up with that of the first respondent. He has not noted serial number of the ballot papers which were either treated as doubtful or rejected as invalid much less reasons for rejection. He has not complained in writing to Assistant Returning Officer about commission of these irregularities.

P.W. 7 has stated that in Ex. P-545(a)—Part-II of Form No. 16 of polling Station No. 3—counting supervisor has mentioned doubtful ballot papers as 6 and invalid ballot papers as 12. On scrutiny, of all the eighteen ballot papers, one was treated as valid in favour of first respondent and two in favour of petitioner and remaining 15 were treated as invalid. In Ex. P-545(c)—Part-II of Form No. 16 of polling station No. 18, counting supervisor has mentioned doubtful ballot papers as 'NIL' and rejected ballot papers as 12, in the column meant for mentioning of 'rejected ballot papers'. He stated that on scrutiny of these 12 ballot papers, all of them were rejected as invalid.

In Ex. P-545(d) doubtful ballot papers mentioned as 15 have been scrutinised, one vote treated as valid in favour of petitioner and remaining 14 rejected as invalid.

Out of 14 doubtful ballot papers mentioned in Ex. P-545(f), 4 were treated as valid and remaining 10 as invalid. He has stated that he scrutinised all bundle of doubtful ballot papers, like-wise received at his table and took decision. On scrutiny of 26 rejected ballot papers mentioned in Ex. P-545(ag) he was satisfied that all of them were liable to be rejected as invalid. Consequently, there was no variation.

Out of 10 doubtful ballot papers, 3 were treated as valid in favour of petitioner and remaining 7 were treated as invalid as per Ex. P-545(ah). He also stated that as some of the candidates did not secure any votes, their names were not written in Part-II of Form No. 16 and in some forms though their names were written, nothing is mentioned against their names. P.W. 7 admitted that as per Ex. P-547, certified copy of Form No. 20 of Ballot segment, first respondent was shown to have secured 369 at polling station No. 26, whereas in Ex. P-546 (original Form No. 20) first respondent was shown to have secured 269. On verification with entries made in Part-II of Form No. 16, it was noticed that first respondent has secured only 269 and not 369 as entered in certified copy.

In Ex. P-546 total votes polled at polling station No. 81 are mentioned as 394 i.e., valid 390 and 4 rejected. Unfortunately, even in Ex. P-547 after mentioning total valid ballot papers as 390 and 4 as rejected, it is typed as 294 instead of 394. This typographical error in the certified copy does not make much difference as result was declared on the basis of entry in original Form No. 20.

Ballot paper account, Form No. 16, of polling station No. 17 though not marked as an exhibit I have referred only to demonstrate that there is no variation in ballot papers used and unused except the arithmetical error in subtraction. Serial numbers of the ballot papers received at the polling station run from 451091 to 451590 making a total of 500. Serial numbers of unused ballot papers with signature of the Presiding Officer run from 451466 to 451450 i.e., 5. Serial numbers of the unused ballot papers without the signature run from 451451 to 451590 making the total of 140 and not 150 as mentioned therein. So, the total number of ballot papers unused with and without signature would be 145 and not 155. Deducting 145 unused ballot papers out of 500 ballot papers received at the polling station, ballot papers to be found in the ballot box would be 355, as correctly mentioned at item No. 5 of Part-I. Same number of ballot papers are counted as per entries in Part-II of this form. Hence, there is neither excess nor shortage.

In Ex. P-545(eb) ballot paper account of polling station No. 21, serial numbers of ballot papers used are mentioned as 453461 to 454101 making the total of 640. One ballot paper cancelled. Therefore, ballot papers to be found in the ballot box are correctly mentioned as 639 at item No. 5 of Part-I. 639 ballot papers are counted as per entry in Part-II of this exhibit. There is neither excess nor shortage.

In Ex. P-545(q) ballot paper account of polling station No. 62, serial numbers of the ballot papers used are not mentioned except mentioning the total number of used ballot papers as 596. One is not inserted. The total number of ballot papers to be found in the ballot box are mentioned as 595 and the same number of ballot papers are counted in Part-II of the same form.

In Ex. P-545(ab) ballot paper account of polling station No. 95, serial numbers of the ballot papers received at the polling station run from 508771 to 509580 making a total of 810. Serial numbers of unused ballot papers without the signature run from 509164 to 509580 making a total of 417. Serial numbers of the ballot papers used at the polling station are mentioned as 508791 to 509163 instead of mentioning it as 508771 to 509163 making the total of 392. The digit 791 is an error for 771. Otherwise, there would be no continuity.

Discrepancies pointed out in ballot paper account. Form No. 16, of polling stations Nos. 22, 24, 36 and 73 are not adverted to as they have not been marked as exhibits.

On an overall analysis, it is noticed that there are excess to the tune of 10 over and above those which were issued and used by the voters, while the total number of ballot papers which were found less than those issued and used by voters would be 147.

In this context, it is necessary to notice the observation of the Supreme Court in *D. P. Sharma v. Commissioner & Returning Officer* (A.I.R. 1984 SC 654) which reads thus:—

"The discrepancy as regards finding of less ballot papers from the ballot boxes than what had been issued and used by the voters is easily understandable, for it is quite conceivable that some voters, who had got ballot papers issued to them, might have walked out of the polling booths without casting them in the ballot boxes and such discrepancy, which in the instant case is only to the extent of 20 ballot papers, is not of much significance. It is true that the discrepancy which pertains to finding of excess ballot papers from the ballot boxes over and above those which had been issued and used by the voters would undoubtedly be serious but in the instant case such discrepancy is again in regard to very small and insignificantly number, namely, 316. It may be stated that the total number of votes that had been cast at the election were to the tune of 4,36,536 and compared to the magnitude of the votes cast the discrepancy as regards the excess ballot papers found in the ballot boxes is too insignificantly and in any case it is nowhere near the margin of 2727 votes by which the respondent No. 12 defeated the appellant. We are of the view that these discrepancies are so insignificant in character that they could be safely attributed to accidental slip or clerical or arithmetical mistakes that must have been committed at the time of counting and preparation of the statements in Forms 16 and 20. In our view, these discrepancies by themselves do not make out a case for directing a recount of votes. It is well established that in order to obtain recount of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. Admittedly, no such material was plac-

ed by the appellant either before the High Court or this Court. In that view of the matter by themselves the discrepancies which have been pointed out by counsel for the appellant in the statements required to be prepared under Rules 45 and 56, do not make out a case for directing a recount of votes."

(emphasis supplied)

In view of the above dictum, assuming that there were 10 excess and 147 shortages, that by itself will not constitute a good ground to order re-count.

P.W. 20, Election Agent of petitioner, through Ex. P-434 requested the Returning Officer (P.W. 2) to grant him half an hour time to prepare an application for re-count and that request has been acceded to as per the endorsement made thereon. The application filed under Rule 63 of the Rules for re-count is marked as Ex. P-435; manuscript (written) order is marked as Ex. P-436 and typed order is marked as Ex. P-437. Order rejecting the request for re-count reads thus:—

"28-12-1984.

Bijapur.

Shri V. M. Katti Election Agent for Dr. R. B. Choudhari filed an application for recounting. His grounds are given in his petition. For reasons given below, I reject his application for recount.

1. Shri Katti stated that on many ballot papers which were rejected, the ARO did not indicate the reason for rejection. In support he stated that one agent from Bijapur Assembly segment had informed him.

However, neither Sri Katti nor Dr. Choudhari had informed me of this during the course of counting. Also when I enquired from the ARO, he told me that he had affixed the seal prescribed by the Commission on the back of each rejected ballot paper and had indicated one or more of the reasons given in the seal imprint.

2. The objection regarding ballot papers were short one once and there the second time were not brought to my notice. The said ballot paper would not in any way alter the nature of the result and therefore, I do not think it necessary to verify the content of this objection.

3. The counting agents were given the opportunity to observe how ARO decided the rejection or otherwise of doubtful cases. However, the decision is to be made by ARO only.

In the light of above facts, the request for recount made by Sri Katti is hereby rejected.

Sd/-
(J. N. Chaubey)
Returning Officer,
28-Bijapur
Parliamentary Constituency."

Two grounds on which the validity of this order was attacked were—(i) sufficient time was not given to prepare an application setting out the grounds; and (ii) without assigning valid reasons has rejected the request at the behest of Sri Deshmukh.

Returning Officer has given as much time as P.W. 20 required to prepare an application. The grounds that were set out in this application read thus:—

"1. That the Assistant Returning Officers in all Assembly Segments have not properly followed the procedure as required under Rule 56 of the Conduct of Election Rules, 1961.

2. In many of the boxes total number of votes polled and recorded were not correct. In table No. 69 the Bijapur Assembly segment there were less ballot papers in first round and also in second round.

3. The decision taken on doubtful ballot was quite improper and without giving opportunity to this Election Agent and there is substantial majority in favour of Dr. R. B. Choudhari and hence this application may please be allowed after fully hearing the undersigned and giving reasonable opportunity for the same."

According to P.W. 2, Returning Officer, grounds mentioned in Ex. P-435 were insufficient or inadequate to order re-count and in fact, he has assigned cogent reasons for rejection. The allegations in the petition as summarised in the early part of this judgment were viz., that counting staff including the Returning Officer rendered assistance and worked in furtherance of the prospects of the election of first respondent and counting staffs were appointed at the behest of Sri Deshmukh. The further allegation was that at the time of considering this application there was a phone call from Deshmukh and Returning Officer held out an assurance stating that application would be rejected. It is also necessary to notice that as per the evidence of P.Ws. 5 and 18, an observer, deputed by the Election Commission was present in the Returning Officer's room and the Returning Officer in his presence could not have acted arbitrarily. Though the petitioner has examined the Returning Officer as P.W. 2, neither he has been questioned about bias or favouritism or rendering of assistance in furtherance of the prospects of election of first respondent in whatever manner or assurance held out to Sri Deshmukh that he would reject the application filed for recount.

Supreme Court in *Chandra Singh V. Shiv Ram* (A.I.R. 1975 SC 403) has explained what constitute sufficient ground and circumstances under which the Returning Officer can order re-count in exercise of power conferred under Rule 63 of the Rules. It reads thus:—

"Rule 63 of the Conduct of Elections Rules, 1961 obligates the candidate to state the grounds on which he demands such recount, it is plain that a mere doubt or small lead or unspecified blemish in the manner of the counting falls short of the needs of the said rule. Under the rule the demand for recount may be rejected if it appears to the Returning Officer to be frivolous or unreasonable. What is not reasonably grounded or seriously supported is unreasonable or frivolous. Suspicions of possible mischief in the process or likely errors in counting always linger in the mind of the defeated candidate when he is shocked by an unexpected result. The Returning Officer has to be careful, objective and sensitive in assessing the legitimacy of the plea for re-running the course of counting. Victory by a very few votes may certainly be a ground to fear unwitting error in count given other circumstances tending that way. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The best surmise, if it be nothing more than surmise, cannot and should not induce the judge to break open ballot boxes. If the lead is relatively little and/or other legal infirmities or factual flaws hover around, recount is proper, not otherwise."

and in the same decision a word of caution is administered thus:—

"To tarnish the counting staff with bias or partiality is easy for any party who challenged the election of a returned candidate and that the Court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates."

In view of this dictum, I find no error in the said order.

Allegations regarding impersonation are found at paras 49 to 51 of the petition. Allegations were "the petitioner apprehends that votes to the tune of more than 4,000 votes who have been dead are said to have cast their votes. The petitioner has collected the names of dead person in various segments and in whose names votes have been cast at the instance of first respondent in his favour....."—(Vide Exhibits G and H) and stated that on scrutiny, counting has to be done after excluding the ballot papers cast in the names of dead persons. First part of Exhibit G consists of 283 names of dead persons of various villages, in Constituency No. 224, Sindhei Assembly Constituency, prior to the date of election. The second part consists of 24 names

of persons who were dead prior to the election at Malatwad Division, coming within Constituency No. 217, Muddebihal Assembly Segment. Exhibit-H consists of 36 names of dead persons of Bile Bhavi village of 217, Muddebihal Assembly Segment. Neither the entries in register of deaths nor certified extracts of persons referred to in first part of Exhibit-G i.e., voters from Sindhgi Assembly Constituency are produced in proof of these averments.

Petitioner has examined Prakash S. Mallapur, Tahsildar of Muddebihal Taluk, as P.W. 1 and got entries in register of deaths and certified extracts of register marked as Ex. P-1 to Ex. P-401 to establish the death of those persons referred to in the second part of Exhibit-G and Exhibit-H in respect of whom impersonation was alleged to have taken place. P.W. 1 has given the names of villages which were within the jurisdiction of that taluk. Though the list of dead persons as per the second part of Exhibit-G and Exhibit-H of the Muddebihal Taluk was only 60, names of dead persons elicited and death extracts exhibited far exceeded the said number. In fact, the evidence of P.W. 1 himself was that in most of the cases, it was not possible to state whether certified extract of death register pertained to a particular voter or not, as there was variance either in the name or surname. P.W. 20, an Advocate, who knew the difference between pleadings and proof except stating that particulars of impersonation are set out in paras 49 to 51 of the petition and certified copies of death extracts are produced, was hesitant to testify with facts and figures re-identity of votes, action and inaction of their polling agents and/or whether such votes were exercised in favour of first respondent, as a result, there was no evidence in support of the plea that those votes were cast in favour of first respondent and at his instance. So also the petitioner who has been examined as P.W. 21 stated that averments

in the election petition were based on instructions of his election agent and agents. He does not whisper a word about the impersonation. Petitioner has not even examined any of his polling agents in support of this plea. Assuming for the sake of arguments that votes secured through impersonation should be excluded, as impersonation is no longer the corrupt practice, even then, the number mentioned in exhibit to the petition will not tilt the result of declaration. So also, there is not even an iota of evidence regarding rigging. The allegations, under these circumstances, regarding impersonation and rigging must be held to be baseless and wreckless.

Before concluding, necessary to bear in mind the observation of Krishna Iyer J., to the effect "less election litigation is a sign of the people's adult franchise maturity and adventurist election petitions are an infantile disease to be suppressed."

On issue No. 5, I hold that petitioner has failed to establish the essential requirements which would entitle him to have a re-count of ballot paper either on the ground of improper rejection of valid votes or improper acceptance of void votes in favour of first respondent or wrong/mis-count of ballot papers. Consequently, finding on the other ancillary or subsidiary issues must be held against the petitioner.

In the result, election petition is dismissed with costs of Rs. 2,200 to the first respondent.

In view of the dismissal of the election petition, there is no necessity to consider the merit or demerit of re-election petition.

Sd/-
JUDGE.